United States Court of Appeals

for the Second Circuit

JOINT APPENDIX

Original

76-7408

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United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 76-7408

G. T. FLAMMIA,

Plaintiff-Appellee,

—against—

O. S. G. TAP AND DIE, INC.,

Defendant-Appellant.

Appeal from the United States District Court
For the Eastern District of New York



JOINT APPENDIX

[Volume II—Pages 201A to 400A]

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requested --

Q Is that the extent --

A (Continuing) -- including telephone numbers and so forth.

Q Was that the extent of your discussion?

A With Mr. Brancato, yes.

Q All right.

Now, did there or did you thereafter receive a letter dated May 24 from Mr. Zoppelt relative to your letter to Mr. Osawa of May 17th?

A Yes, I did.

MR. LEDWITH: Your Honor, this is Plaintiff No. 7, shall I skip this, too?

THE COURT: That is the letter of May 17th?

MR. LEDWITH: Yes.

THE COURT: What is that exhibit number?

MR. LEDWITH: Exhibit No. 7.

THE CLERK: It has been marked.

MR. LEDWITH: It has been marked.

BY MR. LEDWITH:

Q Now, after receiving this letter from Mr. Zoppelt, were there any further discussions that went on?

A Yes, I called Mr. Zoppelt to ask him what was going on, and he said that Mr. Brancato was going to send

him -- was going to send him or had already sent him by the time I called him a pro forma balance sheet which he was going to study.

MR. LEDWITH: Your Honor, may I refer to Exhibit 8, which is the letter of May 30, 1973, containing the pro forma balance sheet information?

THE COURT: That is Exhibit 8?

MR. LEDWITH: Yes, your Honor.

THE COURT: Do you want to show that to me, I don't have that letter.

MR. LEDWITH: Okay.

It is dated May 30, 1973 and it is addressed to -- well, it is on Mite letterhead and is addressed to Mr. Robert Zoppelt, O.S.G. Tool and Die Company:

"Dear Mr. Zoppelt:

"Pursuant to our telephone conversation, I am enclosing balance sheet and profit and loss statement as of February 28, 1973 for Sossner Tap and Tool Corporation, a wholly owned subsidiary of Mite Corporation.

"If we were to sell Sossner, our objection would require recovery of Mite's investment as reflected on the balance sheet at the time of sale.

"Looking at the February 28 balance sheet,

we would expect the purchaser to pay the sum of:

"(a) Advances from parent, $160,848, and;

"(b) Stockholder equity, $1,906,230, or $2,067,078.

"In view of your intimate knowledge of the tap industry both here and abroad, I don't feel that you should require much commentary to supplement the financial information. I would add, however, that the unauditied statement for the first two months of the current fiscal period as of April 30, 1973 shows sales and other income of approximately $404,000 and pretax profit from operations of about 10 percent. The rate of incoming orders would support our outlook for a solid gain in sales and earnings for Sossner this year.

"Please feel free to call me after you have studied the enclosed statement.

"Very truly yours,

"Leo J. Brancato,

"Executive Vice President."

THE COURT: What is the date of that?

MR. LEDWITH: May 30, 1973.

THE COURT: Mr. Flammia, in the letter, Zoppelt's reply to you, he says he is looking forward

to hearing the results of your discussions with him, meaning Brancato, on May 23rd and May 24th.

Did you have such a discussion with Mr. Brancato on May 23rd or 24th?

THE WITNESS: On the 24th he called me.

THE COURT: A telephone call?

THE WITNESS: A telephone call.

THE COURT: What did he say?

THE WITNESS: He said he wanted to get in touch with Zoppelt --

THE COURT: Oh, okay, I got that, okay.

THE WITNESS: Yes, sir.

THE COURT: That is when you gave him the names of Zoppelt and Osawa?

THE WITNESS: Yes.

BY MR. LEDWITH:

Q All right, now, Mr. Flammia, did you thereafter address a letter to Mr. Zoppelt concerning your own doings around June 2, 1973?

A Yes, after talking with Zoppelt where he had told me that he had received a pro forma invoice and that everything was going pretty good, I wrote a letter in which I told him I would stop all of my negotiations for setting up my own company and building it, and I think Mr. Zoppelt

confidentially expected to consummate the deal and ---

MR. LEDWITH: Your Honor, I have that letter dated June 2, 1973, it is Plaintiff's Exhibit 10.

THE COURT: I remember the letter, you don't have to read it again.

MR. LEDWITH: All right, fine.

Q Now, in this letter of June 2, 1973, Mr. Flammia, you talk about your putting off any final decision to start making taps or any type of setup for the present, and what were you referring to at that time?

A My own company called Pioneer Tap and Tool which I was in the process of setting up to manufacture and/or distribute tools made someplace else.

Q Well, did you thereafter address a letter to the Mite Corporation on June 4th?

A Yes, I wrote a letter to Mr. Brancato stating that I understood that he had sent a pro forma invoice, and that I should -- I felt, I felt and said that possibly I was entitled to a finder's fee and I would enjoy hearing his comments. I think that is just about the way I put it.

MR. LEDWITH: Your Honor, Exhibit 11, does the Court have that?

THE COURT: Yes.

BY MR. LEDWITH:

Q And did you receive a response from Mr. Brancato in letter form?

A Yes, he sent back and said, Well, don't look to me, look to the buyer.

MR. LEDWITH: I refer your Honor to Plaintiff's Exhibit 12.

THE COURT: What date is that letter?

MR. LEDWITH: June 6, 1973.

Q After June 6, 1973, did you have a telephone discussion with Mr. Brancato relative to this finder's fee business?

A Yes, I did.

Q First of all, if you can tell the Court, when did that conversation take place, when was that conversation held and what was said by each of you?

A I called Mr. Brancato, I'm not sure whether I caught him at his home or at his office, and we discussed this particular letter, and Mr. Brancato said to me that it was his understanding that I was going to be a participant and a part owner of the O.S.G. Tap and Die, and that I was going to be the president of the Sossner Tool Division again, and that he felt that a finder's fee was not in order because I was going to be employed by this particular company.

And I felt that Mr. Brancato was a fair and honest person and that evidently O.S.G. had told him this.

MR. LAMBERTON: I object, your Honor.

THE COURT: Strike that.

Q Just try to limit the testimony as to what you said and what Mr. Brancato siad.

A Okay.

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Q Okay.

A And Mr. Brancato said that since I was going to be a part-owner of the company and also be employed by the new owners, that that in effect should be my finder's fee. He did not think we should have both --

MR. LAMBERTON: I move to strike the answer, your Honor. It is obviously based upon hearsay as to what somebody had tole Mr. Brancato.

THE COURT: Mite is a defendant here and I will have to take it, I think.

MR. LAMBERTON: It is hearsay within hearsay -- well --

THE COURT: No, it is not hearsay, and I say that in light of no matter what you said earlier about the indemnification, and there is also the fact that Mite is a defendant.

I don't see it as hearsay. I think it certainly is binding on Mite and it may even be binding on -- it may even be binding to some extent O.S.G.

The inference at the moment is that there is only one other place he could have gotten it.

He did not get that information from you, did he?

THE WITNESS: No, no, he didn't get the information from me.

THE COURT: I would think that the natural inference is a rebuttal inference and that there is only one other source that he could have gotten it from.

BY MR. LEDWITH:

Q Mr. Flammia, to your recollection was that the extent of your conversation with Mr. Brancato or was there more?

A I would say that was the extent of the conversation.

Q All right.

Now, as far as you knew, were negotiations still going on between Mite and O.S.G. relative to the sale of Sossner?

A Yes, there were negotiations going on.

Q Okay.

MR. LEDWITH: Your Honor, I refer to Plaintiff's Exhibit 13, a letter dated June 13.

Does the Court have that?

THE COURT: Yes.

MR. LEDWITH: Okay.

THE COURT: Maybe I had better see it, though.

MR. LEDWITH: May I read it, though? It might be appropriate.

THE COURT: Wait a minute.

Let me see the letter, if I may.

That is Exhibit 13?

MR. LEDWITH: Yes.

(Document handed to the Court)

THE COURT: As I recall it, it refers to a request made by -- oh, I haven't seen this before.

All right, I have seen it now.

THE CLERK: 13 is received in evidence.

MR. LEDWITH: It has already been marked.

BY MR. LEDWITH:

Q Mr. Flammia, did there come a time thereafter that you had a discussion with Mr. Zoppelt in New York relative to your personal involvement in the ongoing acquisition?

A Yes, there was a request after Mr. Zoppelt and Mr. Osawa visited at Sossner.

Q Can you put this now in a time period? Is there a date that you have of it?

A I think they arrived on June 11th or 12th, or I think it was June 10th or 11th. I am not sure what the set-up was, but they were to visit the Sossner tap facilities and they called me and asked me to meet them at the airport and to set up a reservation for them at some motel, and I did set up the reservations. I think it was at the Holiday Inn or Kings Grant. I am not sure which one, in Plainview, and I met

them at the airport and we went, Mr. Osawa and Mr. Zoppelt and I went out to dinner. Then we had a discussion at my house about what they were going to see the following day, and they went to see the Sossner facilities on a Tuesday. I am pretty sure it was on a Tuesday --

THE COURT: Did you go with them?

THE WITNESS: I beg your pardon?

THE COURT: Did you go with them?

THE WITNESS: I was asked not to go with them by Mr. Brancato through Mr. Zoppelt.

BY MR. LEDWITH:

Q What did Mr. Zoppelt say to you?

A Mr. Zoppelt said that he had spoken to Mr. Brancato and Mr. Brancato requested that I not go into the factory with them because he didn't want to get the employees shook up.

Q So I take it then you didn't go with Mr. Osawa and Mr. Zoppelt to Sossner the next day?

A No, I just followed the suggestion that was given to me.

(continued next page)

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THE COURT: You didn't want to shake up tee employees either or were you all friends?

THE WITNESS: I thought Mr. Brancato was being --

THE COURT: I don't want to know what you were thinking.

THE WITNESS: I didn't want to shake up the employees because Mr. Brancato asked me not to.

DIRECT EXAMINATION

BY MR. LEDWITH:

Q Did you thereafter have some discussion with Mr. Zoppelt about your financial situation in this Sossner acquisition?

A Yes. He told me to write something down about what kind of deal I wanted to make.

Q Did you do that?

A Yes, on a memorandum pad that I handed to him.

MR. LEDWITH: May I show the witness Plaintiff's Exhibit 14, the memorandum dated June 14, 1973?

THE COURT: Let me take a look at it.

(Document handed to Court.)

(Pause)

THE COURT: All right.

THE CLERK: 14 in evidence.

(So marked.)

Q Mr. Flammia, may I ask you where you got the basic outline for this memorandum to Mr. Zoppelt dated June 13th?

A I was asked what they thought my remuneration would be and I more or less outlined things that I was familiar wite.

In other words, my exposure to employment-type contracts and what I thought was a reasonable and fair salary based on the times.

Q Had you discussed any of these provisions with Mr. Zoppelt before drawing this list up?

A Not specifically.

Q Now, referring to item 1 on the list, you have a basic salary of $36,000.00.

A Thirty-six thousand dollars, yes, sir.

Q Then, item No. 2, you say, car and expenses for same --

A Yes -- car, automobile, and the expenses for the automobile.

Q For the car. I see.

You say, under "(a) involves getting rid of present car now owned by me."

A That's right. I just wanted to tell them that I had to sell my car and a lot of rigamarole would have to be

gone through. Maybe they would buy my car instead. I don't know. I am trying to give them a quick, comprehensive picture.

Q You say three pension plans and life insurance.

A Yes.

Q Had you discussed this with Mr. Zoppelt at all before putting it down on that list?

A Not in that specific form. We talked about fringe benefits and other things in general. We never got to put down specifics but they wanted to know what I wanted so I put down what I thought was reasonable and fair based on my prior experience with Sossner since its inception.

Q You talk about expenses, travel expenses, entertainment, etc.?

A That's riget.

Q No. 5 says, "Special account, not over $100 a week, not covering certain expenses, allowing me more time for work."

Generally, can you explain what this meant?

A Well, it meant that I felt that some of our problems with the company was not enough of a certain type of entertainment which were rather personal.

I happen to own a rather lovely place in Jamesport, Long Island which was big and took an awful lot of care to keep it up. I also had a boat which took a lot of

care to keep it up. So, I wanted to be able to feel that I could spend approximately $100 -- I don't know if I said a week or month -- on this type of entertainment and with the customers it naturally would have to be justified. But, this was something they should know would be coming and it was just put in there as a thing I thought would be helpful for the company because mowing the lawn used to take me quite a long time and I felt if I could entertain customers rather than mow the lawn, that would be better for the company.

Q No. 6, you have personal phone bills.

A What I meant was a phone to be used more or less personally by me for company business rather than tying up my own phone or my family's phone, especially in Jamesport because every Brooklyn call would be a dollar and a half.

It also meant that anybody could get a hold of me at any time of the day or night because he had a night shift or was contemplating a night shift.

I had had a phone in my automobile when President of Sossner so I could be reached at any time.

Q Item No. 7, a bonus paid on profit suggestions and then you say, "See next page."

Then, you go on to say, fifty per cent of profit after taxes after first five percent for company payable in stock in company and/or cash proportion to be determined.

Profit to be calculated against sales or inventory, decreases or increases, depreciation, straight line or useful life and I think that concludes it.

What did all that mean?

A I wanted to have a motivation based on profit rather than on straight salary which I have always enjoyed -- motivation based on profit. How much do you sell and how much profit do you make. I felt if I could share in half of the profit after the company had enjoyed a five per cent net return on their -- on the sales investment that it would be reasonable. It was basically a suggestion, a method of compensation -- you know -- they discussed a sharing incentive, sharing of bonuses and I thought this would be a good method.

Q Can you take, say, the year 1972 and the figures of that year and give us a concrete example of how this profit, motivated profit-sharing of yours would work?

MR. LAMBERTON: I think this is perfectly clear -- after five per cent of the company's profit.

I don't think we need a theoretical calculation based on something that never happened.

THE COURT: Well, I don't know, Mr. Lamberton. I will allow it in light of the alleged discussion with Mr. Zoppelt and Mr. Osawa in which they may have been dreaming and puffing in your mind but it may have

some relevance. I will allow it.

A Well, I honestly didn't anticipate that there would be much profit in the company for two to three years of any real sort --

THE COURT: No, no.

The question is, could you take the 1972 figures of Zoppelt -- of Sossner and can you relate what that would have resulted in, if anything, in benefits to you, as far as 50 per cent after the first five per cent?

THE WITNESS: Nothing.

Q But give us the formula. Gross sales --

THE COURT: He said, "Nothing."

MR. LEDWITH: Well, I want him to give the formula.

THE COURT: I know.

MR. LEDWITH: Do you really? It took me hours --

THE COURT: You take the first five per cent after taxes and then split it fifty-fifty.

MR. LEDWITH: He explained it to me for two hours and I couldn't figure it out.

THE COURT: I have a very clear mental picture.

Q Based on your projected sales for 1973 and 1974, how would that formula, if applied, work out?

MR. LAMBERTON: Same objection.

THE COURT: Same ruling.

THE WITNESS: Shall I answer?

THE COURT: Yes.

A I don't know. We were changing hands. Under Sossner I projected --

THE COURT: Wait. He said based on that book, what, if anything, would this result in in 1973 and 1974 and underscore the words "if anything."

THE WITNESS: In fiscal '73 we had a sales volume --

THE COURT: Net profit.

THE WITNESS: Percentage of operating profit to sales volume, 1.7 before taxes.

THE COURT: And after taxes?

THE WITNESS: They don't show it.

THE COURT: Can you figure it out?

THE WITNESS: I would say it would be about 1 1/2 per cent. I really don't know. I did not see the figures for the fiscal years. These are the anticipated figures.

THE COURT: I understand. But based on your projection for 1973 and 1974 can you give us an estimate of what that bonus left after five per cent might be?

THE WITNESS: Well, again, in 1974, looking at these figures, the answer would have been 0, again.

THE COURT: '73 and '74, 0.

Q What about 1975?

A '75, say, ten per cent. That was my anticipated operating profit.

THE COURT: How much?

THE WITNESS: $250,000

THE COURT: That was ten per cent. So 125,000 would be half of that. That would be five per cent.

THE WITNESS: Yes.

THE COURT: And half of that would be sixty two five.

MR. LAMBERTON: I believe it is five per cent of the after-tax profit.

THE WITNESS: I don't know what the after-tax profit would be. This is not after sales profit.

THE COURT: Oh, I beg your pardon. I misunderstood.

Could you estimate what the net profit after taxes would be on the $250,000?

THE WITNESS: I would say it would be $125,000.

THE COURT: So, half of that would be what -- 62,500.

THE WITNESS: No. They used up the five per cent already. Five per cent of two and a half million is all theirs. I get nothing.

THE COURT: All right.

Q Now, this projection of yours, I take it, is based on the most advantageous use of machinery and investments and volume of sales based on capital improvement and by investments of half a million dollars over a period of time?

A That's right.

Q Now, did you -- after having drawn this up, did you present this list to Mr. Zoppelt?

A Yes.

Q I'm sorry. There's more to this.

THE COURT: Did you present it or mail it?

THE WITNESS: No. I handed it to him.

THE COURT: At his house?

THE WITNESS: I think at the motel.

THE COURT: What did he do?

THE WITNESS: He looked at it, read it very, very quickly, and more or less disagreed with the fifty per cent thing which he misinterpreted the same as Mr. Ledwith did and he then took exception to the last page which is my share of the $100,000 -- how I was going to pay the $100,000 as my part of the deal.

THE COURT: How you were going to pay the 100,000?

THE WITNESS: Yes.

MR. LEDWITH: We will get to that, Judge.

I forgot.

Q You have here a three-year agreement with six months notice of termination at the end of two years, agreement to be extended for three-year periods with the same six-months' notice.

Is that essentially what you are asking for in terms of a contract?

A The only contract I had was with Helicoil Company --

THE COURT: He didn't take exception to that?

THE WITNESS: No.

(continued next page)

DIRECT EXAMINATION

BY MR. LEDWITH (Continuing):

Q Stock in company to be valued at book value and must be sold back to company at termination. Company must buy. I must sell. Dividends in proportion to stock ownership --

THE COURT: What did he say to that?

THE WITNESS: Nothing.

Q AT age 65 option to continue as consultant at negotiable salary and cashing in of stock.

A Nothing was said about that.

THE COURT: What did he take exception to? I don't quite understand.

MR. LEDWITH: I haven't read it yet, your Honor.

Q Lastly, my statement that I will invest $100,000 in original purchase still stands. Some sort of special arrangements to be made on terms of payment of this amount.

Now, first of all, did you discuss with Mr. Zoppelt what you meant by some sort of special arrangements to be made on payment of this amount?

A I told him.

Q What did you tell him?

A I told him that I had to cash in some bonds and other negotiables. I didn't know how long it would take.

2 $50,000 -- boom-boom. I don't know as to the other $50,000
3 if I said one month or two months. I knew it would take
4 time to make these deals and I wasn't about to do it at a
5 loss.
6 THE COURT: What did he say?
7 THE WITNESS: He nodded his head more or less
8 and that was it.
9 THE COURT: I thought you said he took exception
10 to it.
11 THE WITNESS: He did bet after I explained it
12 he just nodded his head. There were no negotiations
13 if that's what you mean.
14 Q And as far as you know, were the discussions
15 between O.S.G. and Mite going on even at this point?
16 A Oh, yes.
17 MR. LEDWITH: A letter dated June 27, 1973.
18 (Document handed to Court.)
19 THE COURT: You may continue.
20 MR. LAMBERTON: Your Honor, if it would assist
21 your Honor we have an extra set of exhibits --
22 THE COURT: I think I have them all attached
23 to your motion papers.
24 Q Incidentally, I forgot to ask you, Mr. Flammia,
25 about that memorandum you gave to Mr. Zoppelt dated June 13,

1973, did those seven or so items -- were they absolute demands you were making or was that negotiable?

MR. LAMBERTON: Objection. Leading.

THE COURT: Sustained in that form.

Q Did you have any discussions with Mr. Zoppelt as to the negotiations or lack of negotiations as to these items?

MR. LAMBERTON: Same objection.

THE COURT: I will allow it as to discussion.

A I'd say we had minimum discussions.

He objected I think to the last page and the 50 percent thing and I said that these are just suggestions that you asked me to write down and again, that's about where I thought it ended. I don't know anything else that happened.

Q Were there any discussions other than that about this?

A That's about it -- boom, kaput.

Q Now, after you gave him this list and you had that discussion, what then happened next?

A Not a thing. I guess he went back to Chicago and -- maybe he was just coming in from Chicago. I don't know. I know there was another meeting scheduled to visit the plant with Mr. Osawa Sr. --

MR. LAMBERTON: Objection. These are not things that were done by Mr. Flammia. They are about people unrelated to Mr. Flammia.

As I understand the purport of the question, it is, what did you do next -- not the rest of the people.

THE COURT: No. He said, what did Mr. Zoppelt do next and he said he knew he had one more meeting scheduled at the plant and whether he did that or went to Chicago he doesn't know.

MR. LAMBERTON: I'm sorry, I thought the question was what he did next.

THE COURT: No, Mr. Zoppelt, Mr. Zoppelt.

Q What was the next thing that happened in this entire transaction that you can recall?

A I was notified that Mr. Osawa, Sr. would be here. Mr. Osawa, Jr., Mr. Zoppelt and a man named Mr. Skip Shenoyan would be visiting the plant again and the same rules would apply -- please meet them at the airport. I did. We went out to dinner --

THE COURT: What date was this?

THE WITNESS: This was evidently the 13th or 14th, the night before Mr. Osawa, Sr. saw the plant.

THE COURT: After you gave him the memo?

THE COURT: After you gave him the memo?

THE WITNESS: Yes.

THE COURT: And you met them again at the airport?

THE WITNESS: Yes, or it could have been all the same night. I'm not sure.

Q What happened next?

A We checked into the motel and at Mr. Zoppelt's request I was asked to meet him at the motel to discuss different things while Mr. Osawa, Sr. and Jr. went to the plant.

Mr. Demery came to the motel and picked the two Osawas up and brought them to the plant and I think I sat down with Mr. Zoppelt and I think Mr. Shenoyan was in the room -- I know he was -- and we more or less talked abou things in general.

Q Is there anything specific that you can recall about what was said at that meeting?

A Well, nothing much but it started to become apparent that Mr. Demery was being considered for the position of running the plant and I questioned what was going on and Mr. Zoppelt told me that he was discussion the possibility of Demery running the plant. He was open and above about it. He did tell me that.

Then, we had a further discussion about whether

or not I thought I was much more capable and things like that and we got into rather extraneous, irrelevant arguments.

Q And after that meeting was concluded did you receive another communication or contact from somebody connected with O.S.G.?

A I followed it up and asked Mr. Zoppelt what was going on --

MR. LAMBERTON: I think the answer to that question, did you receive another communication, would be helpful, so we can follow this in some logical order.

THE COURT: Yes.

Did you have any communication with Mr. Zoppelt?

MR. LEDWITH: I will withdraw the question.

Q Was there anything further said between you and Mr. Zoppelt at that time or soon thereafter?

A It seems to me that on the following day we had another discussion about what was going to happen with my position in the company and my share of the business.

MR. LAMBERTON: Can we have an identification as to time?

THE COURT: Yes. This is on June 15.

THE WITNESS: I'll say June 15. It was in that week they were visiting the plant.

THE COURT: And you had a discussion with Zoppelt and who else?

THE WITNESS: I think Mr. Shenoyan was there too.

Q What was the content of that discussion?

A I said, since I am evidently not going to become the president of your company then why not hire me for two years at $50,000 a year and I will run your plant and make it successful and I further went on to say that in effect he was saving $100,000 in finder's fees because he was also getting my employment for two years.

Q Did you receive any further communications from anybody from O.S.G. after that?

A Yes.

Q When was that?

A I received a phone call from Mr. Zoppelt requesting me to go to Chicago in July after he had consummated the deal or written up the deal with Sossner.

Q Did you go to Chicago?

A Yes.

Q Did you go by plane?

A I went by American Airlines and arrived on a Monday night, July 2nd.

Q Were you met at the airport?

A No. I was told to stay at any hotel. I got in late and stayed at the Regency Hyatt, which was very convenient.

I received a call from Mr. Zoppelt at approximately 11:00 o'clock that night saying that he had previous commitments to drive up to Osbourne Machinery -- I think the name of the company was -- in Waukesha, Wisconsin and I -- would I mind riding up with he and Mr. Reiss.

They picked me up the next morning and we drove to Wisconsin.

Q Do you recall what date that was?

A That was the 3rd.

Q And did you in fact go up there?

A Yes. I went up there, looked at a plant, Osbourne Machinery, met the principal, a fellow named Warren Osbourne and a couple of other people.

Q And then what happened next?

A Then we drove back to Scarborough. We dropped Mr. Reiss off and Mr. Zoppelt and I went to his club for dinner.

Q Was any discussion held them?

A We discussed what was going on with Mr. Demery and where did I stand, what was it all about; why was I being pushed out of this picture and we talked about that for

two or three or four hours and Mr. Zoppelt then called Mr. Osawa and discussed something with him on the phone and made an appointment to have breakfast on the 4th of July.

Q And did you in fact get together and have breakfast on the 4th of July?

A Yes. Mr. Osawa and Mr. Zoppelt met me at the Holiday Inn. I had moved to a different motel at Mr. Zoppelt's request because it was more convenient to his house.

Q Was any discussion held then?

A Yes. We set up -- oh, prior -- on the night before, Mr. Zoppelt handed me a letter which was dated, I think, July 2nd, outlining a proposition for my employment as vice president and manager.

MR. LEDWITH: I refer to Exhibit 16, July 2, 1973, a letter on O.S.G. letterhead.

If I just read the last paragraph of this letter --

THE COURT: Go ahead and read it.

MR. LEDWITH: Thank you.

"I would like to have you give this letter your best consideration and confirm to us whether or not you accept our proposal.

"As you know, it will probably be August 1st to August 6th before we will be able to take over the

operation of Sossner. In order for us to properly formulate our plans we would like for you to give us your reply by July 10. We are tentatively arranging our next meeting at Sossner for the 10th or 11th. We want to formulate our final management decisions by then.

"I am looking forward to hearing from you."

I'm sorry. I read the wrong paragraph.

"Quite naturally, we would offer you a contract which would be compatible with the normal terms of this type of contract.

"The period of this contract, terms and conditions, responsibility, et cetera, we would like for you to work out with Warren Demery.

"The reason for this is that it is the unanimous opinion of all concerned that after your 25 years as president of Sossner you may find it difficult to work as a part of a management team.

"It is also our opinion that we would all like to have you work with us if you could be compatible with the management team. Your meeting with Mr. Demery should give you the answer to this."

(continued next page)

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DIRECT EXAMINATION

BY MR. LEDWITH (Cont'd):

MR. LAMBERTON: Could we continue it, your Honor, on to the next sentence on the next page?

MR. LEDWITH: Surely.

"It is my personal feeling that should you be able to fit into this program as we have it outlined that a better and more lucrative position will become available."

Q Okay.

Now, you indicated that this letter was given to you on the evening of July 3rd; is that right?

A Yes.

Q And did you have a meeting on July the 4th, as indicated?

A Yes, we had a meeting, breakfast meeting on July 4th, with Mr. Osawa, Mr. Zoppelt.

Q Okay.

Were any discussions held at that meeting?

A Yes. I indicated that I would accept the job and -- after they had indicated that they were talking about 18 months' contract, employment contract.

I said I would -- indicated that I would

accept the job. I would go back to Long Island and talk it over with Demery and get all the details straightened out for their request.

We went as far as to plan what I was going to be doing in August. Mr. Osawa was going to be heading back to Japan and I was supposed to renew my passport and go back to Japan and look over the OSG operation.

When I left that -- when I left Chicago, I felt that I now obtained a position working for O.S.G. Tap and Die, as vice-president of manufacturing of Sossner Tool Division.

Q Okay.

Now, during this meeting of July 4th, was there any discussion between you and Mr. Shufelt and Mr. Osawa concerning your investment of $100,000 in Sossner?

A Yes. We discussed my investment of five per cent in O.S.G. -- in Sossner and Mr. Shufelt indicated that he was going to invest 10 per cent and Mr. Osawa said nobody gets any part of this deal or words to that effect.

It was going to be a hundred per cent ownership by O.S.G.

Q All right.

Now, you then returned to New York; is that correct?

A I then returned to New York.

Q And did you meet with Mr. Demery?

A I met with Demery on the Friday following -- or the Thursday after the fourth of July and we went over all of the details that we talked about as to what my duties would be.

We even selected the office that I would sit in. Everything was rather well outline and I left the meeting with Mr. Demery with the statement: Well, Warren, you're going to be my boss.

I said: Now, show me what you can do for me? They have offered me 18 months. See if you can get me two years.

Well the results are he came back with one year. So I told him what to do.

Q I'm sorry?

A He came back with a one-year offer.

Q And this was when, the same day?

A No, it was about a week later.

Q Okay.

A In fact, he said to me he hadn't even

worked out his own contract.

So it seemed to me he was rather surprised about even my letter. My letter was handed to me and his letter was in the mail, so I sort of got it before he did.

Q Okay.

A His copy of my employment contract.

THE COURT: Wait a minute. Wait a minute. You got a letter on July --

THE WITNESS: 2nd. Handed to me.

THE COURT: Handed to you?

THE WITNESS: Yes.

THE COURT: He said he hand't gotten his letter yet?

THE WITNESS: No, sir.

It was a surprise; it was a surprise.

BY MR. LEDWITH:

Q Okay.

Now --

THE COURT: Let me see that July 2nd letter? May I?

MR. LEDWITH: Surely.

THE COURT: All right. Go.

Q Now, you indicated that you accepted this

offer that was given to you when you were in Chicago, as outline in that July 2nd, letter, the one with the 18-month employment contract.

Now, didyou indicate to anyone why you accepted the offer?

A Well, I know why I accepted the offer.

MR. LAMBERTON: Your Honor, I think that called for a yes or no.

THE COURT: No. The answer is yes or no.

You indicated to either -- to anyone at Osawa or anybody at Mite?

Not what you know. Did you indicate your reasons why to anybody, yes or no?

MR. LAMBERTON: Yes, your Honor.

THE WITNESS: I don't remember.

Q Okay.

Then you had this discussion with Demery and you asked for -- asked him to get a 20-month contract?

A 24 months.

Q 24 months. Sorry. All right.

Now, what did he say when you said that to him?

A He said he'd -- that he would -- naturally

said he would look into it. He wanted to double-check with O.S.G. and that he would let me know. And in the meantime, I told him I was going to renew my passport and I said I understand it cost $10.

He said submit the bill to me.

Q Then he contacted you later on?

A I had to contact him because he just didn't get around to contacting anybody.

Q All right.

When you contacted him what did he say to you and what did you say to him?

A First time I contacted him was on a Friday following, I think, it was, yes, it was on a Friday, and he said that he had not worked out his own contract yet and he was still working on that. He would get back to me.

And he finally got back to me, I think, after I called him again and told me that 12 months is what he was offering for the job, and I again told him -- then he put it in writing, as you have -- he confirmed.

I said no. This is about July 13th.

MR. LAMBERTON: I'm sorry, your Honor. The witness is dropping his voice. I can't --

THE COURT: What was that last --

THE WITNESS: On about July 13th, when he informed me of the 12 months. I think he informed me by phone.

Am I losing my voice? I don't really know.

THE COURT: You dropped your voice. You said on or about July 13th.

THE WITNESS: I'll try not to.

MR. LAMBERTON: Just so that we can hear the --

THE WITNESS: I have had a throat problem and so if I am losing my voice, let me know.

I apologize.

MR. LEDWITH: Your Honor, I refer the Court now to the letter onf Sossner letterhead dated July 13th and marked Exhibit 17.

THE COURT: Yes. Let me take a look at it.

MR. LEDWITH: Shall I read that quickly, your Honor?

THE COURT: You don't have to read it into the record. I can read it quicker.

MR. LEDWITH: Oh, surely.

THE COURT: All right.

MR. LEDWITH: I refer also, your Honor, to Plaintiff's Exhibit 18, a letter on O.S.G. letterhead dated July 17th, addressed to Mr. Flammia.

THE COURT: Yes.

MR. LEDWITH: To complete everything, your Honor, this Plaintiff's Exhibit 19, the stock purchase agreement dated August 1st.

THE COURT: Yes.

BY MR. LEDWITH:

Q All right.

Mr. Flammia, after you explained to Mr. Demery that you were not agreeable to this final offer, what did you do then?

MR. LAMBERTON: I object, your Honor, to the form of the question.

MR. LEDWITH: I'll withdraw the question.

MR. LAMBERTON: A final offer?

He just heard that it was a written offer.

MR. LEDWITH: I apologize. I withdraw the question.

Q After you had this discussion with Mr. Demery, what did you do then?

Did you do anything to do with your own

business?

A Well, yes. Yes, I started to proceed with the idea of going into business for myself. I then tried to pick up the threads of a couple of things that had happened during these negotiations, which I had thrown to one side, and one was a little bit too late.

MR. LAMBERTON: Your Honor, I object.

I don't know that this is of any real relevance at the moment.

THE COURT: Maybe on the fourth question.

MR. LAMBERTON: I'm sorry?

THE COURT: It might be on the fourth question. It's not relevant on the first two questions but it might be on the fourth question.

(Continued on next page.)

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DIRECT EXAMINATION

BY MR. LEDWITH: (Cont'd.)

MR. LAMBERTON: He's already testified, your Honor, that he drove from early -- early in April he drove from Long Island toward Pennsylvania. It rained. He said in effect, the heck with the business, I'm going to take the summer off.

THE COURT: Well, no. He went to Chicago he talked to your people about doing some work. That doesn't confirm that statement.

MR. LAMBERTON: I thought I had remembered the testimony.

THE COURT: I remember. That was one evening's decision but apparently he changed when he went to Chicago to talk to Mr. Shufelt.

I will take it.

BY MR. LEDWITH:

Q Will you go on and explain?

A Well, actually during the negotiations of the possible acquisition by Sossner and O.S.G., I had been approached by the Colt Industries, to become an executive Pratney Whitney Small Tools in Hartford, Connecticut. And Mr. Hollis, who was president of the company, had indicated that if I could get through their screening center,

that I was in line for a job of approximately $40,000 a year. The -- the day I went into the city, to be interviewed, had a psychological test and so forth, happened to be the 23rd of May. It was on a Wednesday. And we went through -- I went through all of the tests and then I was interviewed by the psychiatrist and he wanted to know why I wanted to work for Colt Industries. I said I honestly don't know whether I do want to work for Colt Industries. I was asked to come here by Mr. Hollis to see whether or not I could pass your psychological test but I says I have a possible deal cooking which would be a lot easier, No. 1, it would be -- I would go back to Sossner Tap and Tool as a part owner and in my old position or I could start up my own business or I could come back -- go to work for Pratney Whitney.

He says, my advice would be -- my advice to you would be to go back and sit in your old chair and you would have absolutely no problems at all to get going, he said. So that's the type of report that he turned in to Mr. Hollis. Because later on Mr. Hollis said t me, what did you do to me? You loused me up. I'm trying to get you a job and you practically told him you didn't want one. It was the truth.

Q Okay. Did you then return to Pioneer?

A I returned to Pioneer but actually I had been away from the business a few months and I felt that maybe I ought to get -- maybe I didn't want to go in business for myself, so I accepted a job as a consultant down in Millersburg, Pennsylvania, with the Brubacker Tool Corporation. I was offered the choice of going to work there as assistant to the president of as a consultant. I chose to be a consultant.

Q And then where was your next business?

A In the meantime --

MR. LAMBERTON: Your Honor, I believe that we are now beyond the period. He's indicated that he had given up his business.

THE WITNESS: Right.

MR. LAMBERTON: And the circumstances. We are after any period that is at all relevant to this particular action and certainly anything that relates to the value of the services he performed.

THE COURT: I will sustain the objection. If you wish to press it?

BY MR. LEDWITH:

Q Did you some time thereafter pick up Pioneer?

A Yes.

Q Okay.

Thank you, Mr. Flammia.

I have no further questions, your Honor. Do you want these things, your Honor?

THE COURT: Not now. I'll want them later or I may want them.

CROSS-EXAMINATION

BY MR. LAMBERTON:

Q Mr. Flammia, I believe that you testified that in 1967 for a brief period of time you were president of Sossner Tool?

A Yes.

Q And at that time your slaary as president was $45,000?

A Yes, sir.

Q And the company was then acquired by Helicoil and your salary was reduced $10,000 to $35,000 a year?

A Correct.

Q And it stayed at $35,000 a year for the next three years, 1967 to 1970?

A It also stayed at other things. Well, I mean, I -- yes, it did.

Q $35,000?

A It just stayed $35,000 a year.

Q In 1967, '68, '69?

A For the three year contract. I have it with me.

Q No, thank you. Just tell me what your salary was?

A $35,000 a year.

Q And in 1970, when Mite took over, your salary was continued at $35,000 a year?

A Yes.

Q 1970, in 1971?

A Yes.

Q And in 1972, you got a salary of $35,000 plus this sales participation?

A Correct.

(Continued on next page.)

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Q So that in 1972 ending in February, 1973, I believe, your total compensation was $40,000 plus?

A Correct.

Q And that, I believe, $40,000, works out to about $3,333 a month, doesn't it?

A Yes.

Q Three and a third thousand dollars a month?

A Okay.

Q And then you quit in March of 1973?

A Correct.

Q And after your termination, I think, you had testified to starting to set up your own organization?

A Yes.

Q And that took place in late April?

A Yes.

Q I take it, there was no money coming in at that time from your new business?

A No.

Q That you were looking for customers and suppliers and plant?

A Yes.

Q And you were incurring expenses at that time?

A Yes.

Q Now, you went to O.S.G. on May 14, 1973, as a potential supplier, to look to them as a potential supplier for Pioneer?

A Correct.

Q And that was the first time that there was any discussion of the possible acquisition of Sossner with O.S.G.?

A Yes.

Q And after that first discussion on May 14, 1973, I believe you've testified that you had several phone calls with both O.S.G. and Mite?

A Yes.

Q And that you had -- you wrote letters to O.S.G. and Mite?

A Yes.

Q And you also had meetings with Mr. Shufelt and Mr. Osawa?

A Yes.

Q Mr. Shionoya?

A Yes.

Q And those meetings basically took place in New York, with one exception?

A Yes.

Q And these took -- these -- the correspondence, the telephone conversations and again the meetings, took place basically from May 14th to June 27th?

A Yes.

Q And June 27th was the date on which a letter of intent was entered into by Mite and O.S.G., was it not?

A Yes.

Q And subsequent to that, you had one further meeting in Chicago with Mr. Zoppelt?

A Yes.

Q And the stock purchase agreement was then concluded on -- on August 1, 1973?

A That's my information.

Q And that's the information in P.X. 19, isn't it?

A Yes.

Q So that the total period during which the -- from the time that you brought up Sossner until the transaction was completed was two and a half months, that is, from May 14th until August 1st; isn't that correct?

A I imagine so, yes. Figure it out easeily.

Q If you were paid during that period at the

maximum rate that you had received since say 1967, that is, 4#,333 a month, that would mean that your total compensation would be two and a half times the two and a half months times $3,333, wouldn't that be correct?

MR. LEDWITH: I'll object. It's a hypothetical question.

MR. LAMBERTON: This is purely --

MR. LEDWITH: With no basis in fact.

THE COURT: Well, no. It's got some -- all right. He says that his last salary was at $40,000 a year and you don't have to tell a judge how to divide 12 into $40,000 a year, since they know that arthimatic very well.

What he says, these negotiations took two and a half months. So you can multiply two and a half months times $3,333.33 which I suppose has some indication of what he regards as quantum meruit. I don't know. But I'll allow it for that purpose.

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MR. LAMBERTON: Your Honor, the theory is the value of his services based on the value of his prior services, your Honor.

MR. LEDWITH: Your Honor, that is not what --

THE COURT: Let me say this:

If I understand his theory, his theory is that he is entitled to his hourly rate for the work that he did -- and I am not saying that it is correct, but this is Mr. Lamberton's theory, and that whatever it is worth, he is entitled to present.

MR. LEDWITH: I respectfully except to it.

THE COURT: All right, all right.

Now, that is a total of how much -- two and a half times $3,333, how much is that?

MR. LAMBERTON: I have multiplied it and if my computation is correct, it is $8,333.

Will you accept my computation, Mr. Flammia?

THE COURT: $8,333.

THE WITNESS: I will accept your computation.

MR. LAMBERTON: Subject to checking or subject to your Honor's checking.

THE WITNESS: A witness cannot ask questions?

THE COURT: No, you are not supposed to ask questions.

THE WITNESS: Okay.

BY MR. LAMBERTON:

Q Now, during that period you incurred the expenses of two trips to Chicago, I believe?

A Yes.

Q How much would you estimate those expenses to be?

A I would say the first one was about 300 or 400 dollars.

Q And the second?

A The second one I was compensated for by O.S.G.

Q So it didn't cost you anything?

A No, except for the 4th of July holiday.

Q That would be included in the two and a half months, wouldn't it?

A Yes, sir.

Q I suppose you also incurred some telephone bills and correspondence expenses, and how much would you estimate that to be, a hundred dollars?

A Yes.

Q So we are talking about a total of what, $500 of expenses?

A I don't understand the question.

THE COURT: He put $400 and $100 for phone bills as the total expenses during that two and a half month

period, out-of-pocket expenses.

BY MR. LAMBERTON:

Q You were paid on the basis of time, effort and expenses, so it would be something on the order of --

THE COURT: In that form I would have to sustain an objection.

If you were paid on the basis of your prior salary for Sossner just before you left for two and a half month period plus the out-of-pocket expenses you put in on this project, it would be $8,833, is that right?

THE WITNESS: I haven't figured it out. I guess it is right.

THE COURT: With nothing for overtime.

THE WITNESS: With nothing for overtime.

THE COURT: Okay.

THE WITNESS: And no job.

THE COURT: Yes, but if you had been paid at that rate --

THE WITNESS: Yes.

BY MR. LAMBERTON:

Q Have you ever operated as a finder before, Mr. Flammia?

A No.

MR. LEDWITH: I object to the form of the question.

THE COURT: You object to the form of the question?

MR. LEDWITH: If he operated as a finder before, that presupposes acting as a finder here, your Honor.

THE COURT: I wouldn't object to that. You may, if you wish.

MR. LEDWITH: I object to the form of the question, your Honor.

THE COURT: All right, I will allow it. It is cross-examination. I will allow it.

Did you ever operate as a finder prior to this?

THE WITNESS: No.

BY MR. LAMBERTON:

Q Were you operating as a finder in this particular occasion, Mr. Flammia?

MR. LEDWITH: Objected to as a conclusion of law. He is asking the witness to make --

THE COURT: In his opinion.

I will allow it.

A I believe that I acted as a finder after I discussed it, yes, but I had no intention of going out to do this. I said so in my letters. I didn't go deliberately to sell Sossner.

Q But you had no intention of going out and acting as a finder, did you?

A Absolutely no, no, sir, I had absolutely no intention of acting as a finder. I won't repudiate what I said in the letters. I had no intention of being a finder or dealing. I just saw a very good deal and I went for it.

Q Do you have any idea of what is customary for a broker in Suffolk County --

MR. LEDWITH: I object, your Honor.

You are going to qualify him as an expert now? That is in the area of being a finder?

THE COURT: He is asking whether he had any idea.

MR. LEDWITH: He hasn't laid a foundation that he is an expert.

THE COURT: He might have an idea. He doesn't purport to be an expert. He said he had never been a finder before.

MR. LEDWITH: Then he should not be asked this question.

THE COURT: I might have some knowledge although I am not an expert.

THE WITNESS: In relation to real estate deals I have some idea, yes.

BY MR. LAMBERTON:

Q These are residential real estate deals?

A Residential.

Q But do you know about factories and things of that nature?

A I have read of it.

Q No, of your own knowledge.

A Well, where do you get your knowledge except from reading or something?

Q No, by participating in transactions, I assume.

MR. LEDWITH: I object. He just said that he has never participated in any prior transaction.

THE COURT: It is cross-examination. I will allow it.

THE WITNESS: Would you mind asking the question again?

Q Have you ever participated in brokerage transactions as a broker?

A No.

Q You have a broker's license?

A No.

Q You previously testified that you never participated as a finder?

A That is right.

Q And you have never been compensated as a finder?

A No.

Q Do you have any personal knowledge as to what is the customary fee for a finder of a business is?

A It is my understanding it is ten per cent.

Q Do you have any personal knowledge, that can be answered yes or no?

A I don't understand the words "personal knowledge." I really don't.

THE COURT: I am not so sure that I do, either.

Since you excluded whatever he read, I think he is confused.

THE WITNESS: Yes.

Where do you get your personal knowledge? I mean if you get it from above, well, I get it from books.

MR. LAMBERTON: I believe from participation.

Q Did you ever discuss a finder's fee prior to -- did you ever discuss a finder's fee prior to this incident?

A Yes, yes, in relation to the sale of Hellocoil, yes, I have personal knowledge of it. I am glad you refreshed my memory.

Q Did you find a finder's fee in that case?

A No.

Q Who was the finder in that case?

A There was no finder. He set up this deal --

Q No, no, no, I asked who was the finder?

A There was no finder.

Q Now I believe you testified that in 1967 Sossner had sales of 1.9 million.

A Correct.

Q And they had risen from 1948, from a very low level to that 1,900,000?

A Yes, sir.

Q It was quite a substantial rise?

A I think so.

Q And from 1967 to 1973 they rose to $2 million?

A Yes.

Q So that the very steep rise had leveled off very sharp, hadn't it?

A Yes.

THE COURT: I never heard that expression, "leveled off very sharp."

(Discussion was held off the record.)

BY MR. LAMBERTON:

Q In other words, the sales of Sossner between 1967 and 1973 leveled off?

A Yes.

Q Now I believe when you went to O.S.G. on May 14 you were quite knowledgeable about what the purchase price for Sossner would be, weren't you?

A Yes.

Q You knew it would be $2 million, didn't you?

A Yes.

Q If it were for sale?

A Yes.

(continued next page)

Q And you knew that because you had tried to buy it; isn't that correct?

A Yes.

Q Now, in your prior negotiations with Mite Corporation, did Mite tell you the basis for the purchase price they asked?

A Yes.

Q And what was that basis?

A Based on the figures that they had in their pro forma balance sheet, so much money for the stockholder's equity and -- in other words they wanted to recover the investment.

Q In other words what Mite's investment in the corporation was, that was the purchase price?

A That is right.

THE COURT: No, it was $160,000 of loans plus $1,900,000 of stockholder's equity.

THE WITNESS: That is right.

MR. LAMBERTON: It was $1,900,000 of stockholder's equity and $160,000 of advances from the Mite Corporation, from the parent, which meant a total investment of $2,060,000.

THE COURT: That is right, that is right.

THE WITNESS: That is the figures that were

presented to O.S.G., not the ones that I was working on.

THE COURT: Those were represented to O.S.G., and they differed from the ones --

THE WITNESS: They were the more current figures, I didn't have those.

BY MR. LAMBERTON:

Q Now, when you were discussing the possible purchase of Sossner, you were at that time an executive of Sossner, the chief executive, weren't you?

A Yes.

Q And you were well aware of the problems and the opportunities of Sossner?

A Yes.

Q And after you had seen Mr. Brancato, I believe you testified you first went to see both an accountant and an attorney?

A Yes.

Q And did you review the financial statistics with them carefully?

A Yes, sir.

Q And you came up with a purchase price of $1,600,000?

A They did.

Q Did you agree with that?

A I felt that it would be a good deal at $1,600,000.

Q And you presented that to the Mite Corporation?

A Yes, sir.

Q And Mite turned it down, didn't they?

A Yes, they turned it down.

Q Then you went back to a second man who was both an accountant and an attorney?

A Right.

Q And he came up with the same figure?

A Yes.

Q Did you give that to Mite again?

A I don't remember.

Q Now at that time you knew that Sossner needed a major infusion of capital, didn't you?

A Yes.

Q And you discussed this with Mite?

A Yes.

Q And Mite was prepared to make investments, weren't they, but not at the rate that you wanted them made?

A They would make investments if each particular capital expenditure could be justified and documented to an almost impossible degree, yes.

Q Had Mite made a capital investment in O.S.G. in each of the years in which -- had it made a capital investment in Sossner in each of the years in which it owned it?

A Yes.

Q So it was not impossible to document the need for capital expenditures, was it?

A No.

Q Just difficult, perhaps?

A That is right.

Q Now, you testified that this offer just kind of stagnated or hung around, was neither really accepted or rejected, your offer of $1,600,000?

A Can I tell you what happened?

Q No, just try my question for a second.

I believe you said that it just kind of got lost, it never was really determined what would happen to your offer of $1,600,000?

A No, there were no negotiations, if that is what you mean, whether or not I would come up with two million, they just said you should know better than to offer one million six.

Q And they told you the basis on what they would accept the offer?

A Yes.

Q And that was on the basis of the investment?

A Yes.

Q And they rejected your offer, didn't they?

A Yes.

Q And you were unable or unwilling to meet the Mite price?

A On the advice of my attorney and accountant, I couldn't see how I could meet it.

Q And you felt that way personally, too, didn't you?

A No.

Q You mean you could not have overruled your attorney and accountant?

A I also had to look for money to back me up, I couldn't get that much more money, the accountants were going to help me get some money, they said if you are just going to pay one million six, otherwise forget it, nobody will give you any money. That was their advice.

Q Did you supply a balance sheet or a profit and loss statement to O.S.G.?

A I supplied my business forecast which included the future profit and loss prediction.

Q Did it include the profit and loss, the most

recent profit and loss statement and balance sheet?

A No, but it referred to it.

Q But it did it include it?

A No.

Q And did you get into the details of the profit and loss statement and the balance sheet with O.S.G. in that first meeting?

A They studied it themselves.

Q Did you discuss it with them?

A Yes, certain facets of the equipment and so on.

Q What were those facets?

A We discussed the need for a lot of capital expenditure.

Q What else did you discuss?

A And whether I considered it a good working company.

Q This was a fairly general discussion, that didn't get down to the nuts and bolts of the financial and the accounting materials involved, did it?

A At that time, no.

Q You didn't discuss, for example, operating ratios, ratios of the general administrative expense to sales?

A It was all written down, they had to study it.

Q You didn't discuss it, did you?

A No, there was no chance to discuss it, everybody had to pursue it and read it before they could discuss it. You just don't look at something and then discuss it.

Q Were the capitalization of expenses or -- you didn't get into that kind of detail, did you, in this general discussion?

A I don't understand the question, capitalization of what expenses, I don't understand the question.

Q Take research and development, did you tell them we capitalize out expenses or we use that and take them or deduct them currently; did you have that discussion?

A No.

Q Did you talk about depreciation?

A Mr. Lamberton, that was the function of Mite's accountants, at the divisional level we did not discuss those things, that was all discussed at corporate headquarters.

Q You were basically a production man and not a financial man?

A I didn't have to be, I had financial people working.

Q But you yourself, sir, were strong on the production and manufacturing side?

A Yes.

Q Now, Mr. Zoppelt on May 23, 1973 asked you specifically for a balance sheet and a profit and loss statement for Sossner, didn't he?

A He asked me if I could get one, yes, I think he did in his letter --

Q So that --

A No, he didn't, he said he was looking forward to receiving one.

Q But that would indicate that you had not given him one prior to that time?

A Mr. Lamberton, I testified that Mr. Brancato and Mr. Zoppelt had asked me to play this low-key, so I did.

Q Low key, high key, we are interested in whether or not you had a balance sheet and a profit and loss statement prior to May 23rd.

A I didn't have balance sheets available, currect balance sheets.

Q And in fact Leo Brancato and the Mite Corporation went ahead and sent balance sheets and profit and loss statements to Mr. Zoppelt and Osawa, didn't he?

A Yes, I imagine so.

Q Well, don't you know that, you have identified --

A I know that from the testimony and I heard that, yes, and from what they told me.

MR. LAMBERTON: I believe we have introduced into evidence a letter of May 30, your Honor, 1973, as PX 8, in which Mr. Brancato sent on to Mr. Zoppelt a profit and loss statement and a balance sheet.

Would you accept that?

THE WITNESS: Yes.

MR. LAMBERTON: And that is the balance sheet as of February 28, 1973?

THE WITNESS: That is what it says, I guess

BY MR. LAMBERTON:

Q Now, was that the last fiscal year of Sasner?

A That was the last fiscal year that I was there yes.

Q And also a profit and loss statement for that fiscal year that ended February 28, 1973?

A Yes.

Q So these had not been previously provided, I take it?

A They were not available to me, they were not prepared at the time.

THE COURT: Mr. Lamberton, I assume we are going to be some time longer with this witness?

MR. LAMBERTON: Yes, your Honor, we probably will be.

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B	Brancato depo		8
C	Zoppelt depo		8

THE COURT: I think I may suspend now and we will resume tomorrow morning.

Can you give me any estimate? I assume you have more witnesses after this?

MR. LEDWITH: Yes, your Honor, we have.

THE COURT: Why don't we go off the record, Mr. Karr.

(Discussion was then held off the record.)

(The session was then concluded.)

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

G. T. FLAMMIA, :

Plaintiff, :

-against- 73-C-1571

MITE CORPORATION and
O.S.G. TAP AND DIE, INC., :

Defendants. :

----------x

United States Courthouse
Brooklyn, New York

December 16, 1975
10:00 o'clock A.M.

B e f o r e :

HONORABLE THOMAS C. PLATT, U.S.D.J.

GENE RUDOLPH
OFFICIAL COURT REPORTER

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GUERRINO T FLAMMIA, having been previously duly sworn, resumed the witness stand, and testified further as follows:

CROSS-EXAMINATION

BY MR. LAMBERTON: (continued)

Q Mr. Flammia, I believe we concluded yesterday on the note that on May 30, 1973 Mr. Brancato of Mite sent on to O.S.G. for the first time the 1972-73 balance sheet and profit and loss statement for Sossner; is that correct?

A Yes.

Q Now, after your initial telephone contacts on May 16 with Mr. Brancato at Mite, you did not participate thereafter in the negotiations concerning the possible acquisition of Sossner; did you?

A Yes and no. By -- by phone conversation. I didn't participate in the negotiations.

Q But you did call both parties to check to see what was going on; didn't you?

A Yes.

THE COURT: After what date, Mr. Lamberton? After what date?

MR. LAMBERTON: After May 16, 1973.

THE COURT: Okay.

Q Now, you were enthusiastic about this proposed acquisition by -- by O.S.G. of Sossner; weren't you?

A Yes.

Q And you thought it might result in a lifetime job, as far as you were concerned; didn't you?

A Yes.

Q And you had previously expressed an interest while you were at Mite in a job contract that would carry you through most of your working life; haven't you?

A Yes.

Q So your interest in long term tenure was not a new one?

In other words, you had previously expressed to Mite and you also were interested, as far as O.S.G. is concerned, in a job that would carry you through most of the rest of your work life?

A Yes.

Q And you were 53 at the time when -- or 54 at that time?

A Yes.

Q Now, after May 30th, when Brancato sent to Zoppelt the financial statements, did you review those with Mr. Zoppelt or Mr. Osawa?

A No.

Q You didn't discuss them at all with them?

A Yes, in general terms. He indicated -- Mr.

Zoppelt --

Q Wait just a second. When did you have this discussion?

A During phone conversations.

Q And what did you say -- when were these phone conversations?

A Right after Mr. Zoppelt received the pro forma statement.

Q Which would have been around the first of June?

A Correct

Q When you met with Mr. Zoppelt and Mr. Osawa on June 12th or June 13th, did you sit down and review them with him then?

A No.

Q So your discussions took place between June 1 and June 12th approximately, on the telephone?

A Yes.

Q Tell us what you discussed with them concerning the balance sheet and the profit and loss statement?

A I told them that they seemed to be a reflection of a pro forma statement that I had seen back in '72.

Q Did you point out anything specifically that they ought to be interested in or concerned about?

A I did not see the statements so I couldn't very

well point out anything.

Q So the answer is no?

A The answer is no.

Q Have you since seen that balance sheet statement?

A Yes.

Q Were there any inaccuracies or pitfalls in the balance sheet, in the profit and loss tatement, that you now see?

A One thing I noticed there, the building wasn't stated as an asset. The building in Lynbrook was not stated as an asset.

Q But you didn't bring that to their attention because you hadn't discussed that with them?

A I think I mentioned to them in conversation that they left out the building.

MR. LAMBERTON: Do you have a copy of PX-8 or the original of PX-8?

Q Here is a copy of PX-8, which is the letter of May 30, 1973 with a balance sheet and the profit and loss statement.

Could you tell me where the Lynbrook building fits into that?

A It's not here.

Q How do you know, sir?

A Because on the statements that I saw, the building was listed as separate because we derived an income from the building.

Q But this shows property, plant and equipment net; does it not?

A Yes.

Q And how do you deduce from that that Lynbrook is or is not in there?

A Because on the sheets that I had seen prior to that, it was listed separately.

Q What sheets were those?

A Sheets that were made available to me.

Q When you were president of Sossner?

A That's right, yes.

Q And that's one thing that you did discuss over the telephone with Mr. Zoppelt then?

A Yes, I believe I did. Either that or in person, I'm not sure.

Q Did you discuss other problems or inaccuracies or -- with Mr. Zoppelt?

A No.

Q Did you discuss, for example, the fact that there might be a substantial tax liability arising out of the fact that Sossner used a different depreciation for tax

purposes and for asset purposes on the balance sheet?

A No.

Q Wasn't that something that substantially affected the profitability of Sossner?

A I don't understand the question.

Q Let me show you the stock purchase agreement Plaintiff's Exhibit 19.

THE COURT: Read back the next to last question, would you please?

(Record read.)

THE COURT: Different from what? Different from what Sossner had used before it was acquired by Helicoil?

MR. LAMBERTON: Let me ask the question of the witness, your Honor.

THE COURT: No. I am a little confused myself. That's why I had it read back.

MR. LAMBERTON: I would prefer -- rather than my testimony I --

THE COURT: All right.

BY MR. LAMBERTON:

Q Do you know what depreciation Sossner used for tax purposes?

A Not exactly.

Q Did they use an accelerating depreciation for tax purposes?

A I don't exactly know.

GR Notes foll.

(Continued on next page)

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CROSS-EXAMINATION

BY MR. LAMBERTON (Cont'd):

Q And do you know whether they used straight-line depreciation in connection with their balance sheet?

A I don't know exactly what time -- what kind of depreciation they used at all. I do not know.

MR. LAMBERTON: We will explore that, your Honor.

The differences in depreciation would result in different --

THE COURT: Yes. It has various ramifications, depending on the form that the purchase took and so forth.

But, go ahead. I was a little confused about the question in the light of -- just said different but didn't say different from what.

MR. LAMBERTON: Your Honor, what we're addressing this to is the --

THE COURT: I understand what you are doing.

Go ahead. You don't have to explain.

BY MR. LAMBERTON:

Q Will you please turn to page 5 in Plaintiff's Exhibit 19? I read you the top sentence, "It is under

that such financial statements do not include provision for deferred taxes based on the use of different depreciation methods for accounting and tax purposes to the extent of approximately $100,000."

Do you see that statement?

A Yes.

Q And had you discussed this with Sossner at any time prior to the signing of this stock purchase agreement?

A I still --

Q I'm sorry.

Did you discussion this with O.S.G. at any time prior to the signing of this purchase agreement?

A No.

Q Were there other problems in connection with the balance sheet and profit and loss statement that you knew of?

A No.

Q Was it true that, for example, while you were president of Sossner, that Sossner bought equipment worth $70,000 and that was entered on the books twice and resulting in a $70,000 over statement of equipment at the plant?

A Yes.

Q Did you point that out to O.S.G.?

A I don't recall.

Q You've already indicated that you didn't discuss these details.

Are you saying now that it is possible that you did?

A No. I would say no, I did not discuss.

Q Wasn't there a substantial amount of obsolete machinery that was unused and unusable in that plant?

A That was stated in my business forecast.

Q That was not reflected in the balance sheet, was it?

A No.

Q That was an asset -- those were assets listed on the balance sheet, weren't they?

A It is my understanding that these --

Q You can answer that question, can't you?

MR. LEDWITH: Perhaps he can answer the question, your Honor.

THE COURT: Yes.

A It is my understanding that this pro forma balance shee is not an actual accurate balance sheet

which truly reflects all of the assets and liabilities of the company.

It is a starting point for a possible acquisition.

Q But you did not take that starting point and analyze it for O.S.G., did you?

A No.

Q Now, is it true that there was equipment listed on the books as assets that wasn't in fact even in the plant?

A The accountants advised me that they had straightened that matter up.

Q What is your answer, sir?

A I did not make up the balance sheet.

Q Was there equipment listed on your asset inventories that was not even in your plant at Melville?

That's a fairly easy question. Yes or no?

THE COURT: At what time? At the time the balance sheet was prepared?

MR. LAMBERTON: As of February 28th, while he was president of Sossner.

THE WITNESS: The answer is I don't know.

Q Now, I understand -- you mentioned that there was some problem in Lynbrook. Tell us what you

discussed with Mr. Zoppelt about the morning at Lynbrook, will you please?

You indicated that there was a discussion of the Lynbrook property. Tell us what that discussion was?

A I said they had that valued at $180,000 or approximately $180,000 and that there was a possibility, without the building included, that they might be able to get it for less than $2,000,000.

Q What is that, sir? What property?

A The property listed in the name of Sossner Tap and Tool Corporation.

Q But not -- tie that into the Lynbrook -- I'm confused with your answer, sir.

What has that got to do with the Lynbrook property that you discussed with Mr. Zoppelt after he had received a balance sheet?

A It goes back to my original offer.

Q I'm sorry?

A It goes back to my original offer to purchase the business.

Q Now, in fact, you said that there was a separate sheet that you had seen that listed the Lynbrook property separately?

A As a part of the balance sheet, yes.

Q And that did not go, did it, to O.S.G.?

The Lynbrook property or the mortgage?

A As far as I know, it did not go.

Q So that was reassigned to Mite Corporation and Mite thereafter received the benefits from that purchase money mortgage, didn't they?

A I think that is true.

Q Well, It's so reflected, isn't it, in the purchase agreement?

A All right, yes.

Q So that O.S.G. did not end up as the beneficiary of that particular piece of property, did they?

A That's right.

Q Now, did you point out to O.S.G. that Sossner had lost money in its fiscal year ending in 1973, in February 28, 1973?

A They had a copy of my business forecast, which gave all those details.

Q No, sir; no, sir.

The business forecast, to the contrary notwithstanding, let's look at -- not forecasts but what actually happened.

Did you point out to Sossner -- to O.S.G.

that Sossner was losing money?

A Of course.

Q As of February 28, 1973?

A I didn't know that. We hadn't gotten the final statements at that time.

Q Did you point out to O.S.G. that you tried to purchase this on several occasions for $1,600,000?

A Yes.

Q And what did O.S.G. say to that?

A They didn't -- I think that I also indicated that -- that due to the rate of exchange, prevalent at the time, that if they paid $2,000,000 for it, they would be getting it for the equivalent of one million six, which I thought was a fair price.

Q If it were a yen purchase?

A That's right.

Q But in dollars, it was still $2,000,000?

A That's right.

Q Did you point out that the $2,000,000 was substantially more than the assets of Sossner as reflected on the balance sheet, even the balance shee unamended?

THE COURT: The assets or the net worth?

MR. LAMBERTON: I believe the assets, your Honor.

THE COURT: Gross assets?

THE WITNESS: I did not have that particular balance sheet at the time.

BY MR. LAMBERTON:

Q So you could not have pointed it out?

A I told them that I thought the place was worth $1,600,000, easily.

Q But $2,000,000 in this particular transaction?

A Through the rate of exchange.

Q And you were enthusiastic about it?

A Certainly.

Q Now, after you left the employ of Mite, did you seek jobs with other companies?

A I went on a few job interviews.

Q You saw Pratt & Whitney as you testified yesterday?

A Yes.

Q That was prior to May 14th?

A Yes.

Q Did you talk to Reif & Nestor?

A Yes, but not about aposition. About a selling -- possibly selling their product.

Q Did you talk to other companies in this

industry at that time about a job?

A No, I don't think so.

Q But you -- so you went to see at least two?

A No, I went to see one.

Q About a job?

A Yes.

Q And did you ask them or indicate to them that Sossner would be a good acquisition for them?

A No, because they had looked at it once and turned it down.

Q Which company was that?

A Pratt & Whitney.

Q When did they look at it?

A 1967.

Q But you did discuss that with your -- with the president?

A I imagine I might have discussed it with him, yes.

Q Now, when you went to O.S.G. on May 14th, had you previously known Mr. Zoppelt?

A No.

Q Mr. Osawa?

A No.

Q Mr. Shufelt?

A Shufelt by reputation.

Q But you had not met anyone of these gentlemen?

A No.

Q You had a general discussion in the morning and at lunch?

A Yes.

Q And in the afternoon, you first brought up the question of the possible acquisition of Sossner?

A Yes.

Q And your possible employment as a chief executive of that corporation?

A Yes.

Q It is your testimony that there was an agreement on that day with people that you had never known and who had not known you that they agreed to hire you as the president of a coproration?

A Yes.

Q And that on the basis of your unadoring say-so and whatever document was left and might -- might have been left with them, that they had agreed to buy a $2,000,000 company?

A They had agreed to investigate it.

Q How could they hire you as president, until after they had determined whether the company was available for sale?

A That was my question.

Q Did you raise it with them at the time and say: You can't do this, you can't hire me as president, because you don't even know if the company is for sale?

A I certainly did.

Q What did they say?

A I said that I thought I ought to call up and find out, and I did.

Q And once they found out, did they say: Mr. Flammia, here is a contract, let's sign it?

A No.

Q What did they say?

A They said they wanted to discuss the business forecast overnight.

Q And as a matter of fact, they indicated, did they not, that it was premature to consider it at that time, the acquisition of an East Coast outlet?

A They said that they -- it was a little bit ahead of their schedule. They had probably scheduled buying an East Coast plant or a tap manufacturing plant

in the United States within the next couple of years.

Q But you --

A They also told me they were looking for a drill manufacturing plant.

They were looking to expand their outlets in the United States.

Q What question are you now answering, sir?

A All of them.

Q You were prepared then to tie on the basis of the luncheon with Mr. Zoppelt and Osawa, to tie your personal and financial future to O.S.G.?

A Yes, sir.

Q Without any further inquiry or investigation?

A Yes.

Q And you were primarily interested in that job insuring your security for the future?

MR. LEDWITH: I'll object to the form of the question, if I may, your Honor.

THE COURT: He can answer.

MR. LEDWITH: His primary interest, your Honor?

THE COURT: That is the question. If he doesn't understand, he can say he doesnt understand.

THE WITNESS: Please ask it again.

BY MR. LAMBERTON:

Q Were you primarily interested in obtaining a job that would secure your future?

A Not my primary interest.

Q That was a major interest, though?

A A major interest.

Q Now, when you talked with Mr. Zoppelt, didn't he indicate that if O.S.G. acquired Sossner, that he wanted you to be able to buy a portion of the company from O.S.G.?

A That was my idea first.

Q And this discussion just with Zoppel and Osawa, just evolved? It was not planned?

A Absolutely.

Q And the details were left for later, as you've indicated yesterday?

A Yes.

Q And the first step was to find out is this company available for sale?

A Correct.

Q And if it is, is it purchasable?

A Yes.

Q And if it is purchasable, how do we run it?

A Yes.

Q And if we can run it, who are going to be the executives?

A Yes.

Q Then you came down to a -- your two elephone conversations on May 14th and May 16th, with Mr. Brancato in which you attempted to determine whether they were interested -- had any interest in the sale of this division, didn't you?

A Yes.

Q Now, on May 16, 1975 -- 1973, you called Mr. Brancato and with the authorization of O.S.G., identified O.S.G. to him, didn't you?

A Yes.

Q And on May 17th, you wrote two letters, one to O.S.G and the other one to Mr. Brancato; is that correct?

A Yes.

Q Now, I am reading to you from your letter of May 17th to O.S.G., Plaintiff;s Exhibit 6.

"On Wednesday, May 16th, I spoke to Mr. Brancato again and told him that your company was the interested party after my phone conversation with Mr. Zoppelt on Tuesday afternoon,

wherein he authorize me to act on your company's behalf.

"Mr. Brancata asked for a little time to mull it over to buy Sossner."

And there was no offer to buy Sosner, was there?

In your letter you state, he asked -- Brancato asked for a little time to mull over the offer to buy Sossner. There wasn't any offer at that time to buy Sossner, was there, as of May 16, 1973?

A No. That was a bad choice --

Q A misstatement. "At least this weekend, and said that he would get in touch with me.

"He did ask for your name and Mr. Zoppelt and I gave him the name -- the names to him together with your address and telephone number."

So, as of May 16th, Brancato had the names of Terry Osawa and Bob Zoppel, didn't he?

A Yes, sir.

Q You also said in this letter to Osawa,

"I will keep in touch with Mr. Branacato and if I do not hear from him by Wednesday, May 23rd, I will telephone him on Thursday, the 24th," didn't you?

A Yes.

CROSS-EXAMINATION

BY MR. LAMBERTON: (Cont'd.)

Q I'd like to now look at the letter to Brancato and in that one you start off, it's Plaintiff's Exhibit 5, "Dear Leo, I sincerely believe that you should very seriously consider the possibilities of selling the Sossner Division to O.S.G. Tap and Dye as per our conversation last Monday and Wednesday." Again indicating that you had given the information about the purchaser to Mr. Brancato on May 16, didn't you? Now, the last paragraph of that letter states, "I have notified O.S.G. that you were mulling over the possibilities of entering into negotiations and that you will be in touch with me soon." Now, Mr. Brancato hadn't said he was going to call you soon, did he?

A He said he was going to mull it over the week-end.

Q But he didn't say, "I'm going to call you and tell you my decision," did he?

A Not those exact words.

Q As a matter of fact, Mr. Brancato refused to negotiate through you, didn't he?

A Not at that time. Not at that date.

Q But he didn't say that in exactly those words?

THE COURT: Didn't say exactly what?

MR. LAMBERTON: That he would get in touch with -- would mull it over and get in touch with Mr. Flammia.

A I worked with Mr. Brancato five years and I think I understood that he would get in touch with me about anything that -- that was his way of doing business, to complete transactions. He wasn't sloppy.

Q I assume that we'll have to get other testimony as to what Mr. Brancato said. So that as of May 16th the, we -- I think we have fairly clearly established that you had given Osawa and Zoppelt's name to --

A Yes.

Q -- Mr. Brancato. Now, yesterday in response to a question from the Court, the Court asked Mr. Flammia, in the letter, Zoppelt's reply to you, "This was in reply to your letter of May 17th, where you wrote to Zoppelt --", he says he is looking forward to hear the results of your discussion with him, meaning Brancato, on May 24th. "Did you have such a discussion with Mr. Brancato on May 23rd or 24th?"

"The Witness: On the 24th, he called me.

"The Court: A telephone call?

"The Witness: A telephone call.

"The Court: What did he say?

"The Witness: He said he wanted to get in touch with Zoppelt.

"The Court: Oh, okay. I got that. Okay.

"The Witness: Yes, sir.

"The Court: That is when you gave him the names of Zoppelt and Osawa?

"The Witness: Yes."

And there is similar testimony, I believe, on Page 127. That was inaccurate, wasn't it?

A No.

Q Because you had given him the names on the 16th?

A And he called me and asked me for the names again on the 24th.

Q And that is your testimony to explain the fact that you had given him the names previously and you now indicate that he -- after having given him those names on the 16th, he then had to call you on the 24th to find them out again?

MR. LEDWITH: I will object to the form of that question, your Honor.

THE COURT: Yes. That's argumentative. I will sustain it.

MR. LEDWITH: Thank you.

Q You've indicated that you were basically out of the negotiations between the period May 16th when you identified O.S.G. to Brancato until the letter of intent and the stock purchase agreement were signed, haven't you?

A I don't understand the question.

Q You were not a participant in the negotiations between May 16th when you told O.S.G. -- when you told Brancato that O.S.G. might be interested and the stock purchase agreement, whenever that was signed in August, August 1st?

MR. LEDWITH: I object, your Honor, unless he specified what negotiations we're talking about. There is more than one --

THE COURT: I remember his prior testimony. It wasn't exactly that. I will let the witness answer it., if he can.

MR. LAMBERTON: Pardon?

THE COURT: That wasn't his testimony. But it is repetitive. I should sustain the objection but I will allow it. It's cross-examination.

A You're going to have to ask the question again.

Q Weren't you trying to thrust yourself into the negotiations to indicate to O.S.G. that you were playing

a bigger part than you actually were?

A No.

Q Now, then came June 13th when you met with Osawa and Zoppelt, your next meeting after May 14th was June 13th, I believe?

A Or sooner.

Q Pardon?

A Or prior to that. Might have been the 10th. I don't know.

Q But it was in that period, June 10th, June 13th?

A Yes, in that period.

Q At that time you prepared your memorandum with respect to your requests for the presidency?

A Yes.

Q I believe that memorandum is P. 14. May I show you a copy of P.X.14?

A Thank you.

Q And these were the matters which had not previously been resolved between you and Zoppelt or Osawa, isnt't that correct?

A Yes.

Q So, if you'll look at it, I have listed the various matters, No. 1, was salary; No. 2, was car expenses,

No, 3 was pension; No. 4 was travel and entertainment expenses; No. 5 was special weekly account; No. 6 was personal phone bills; No. 7 was your bonus based upon profit and the calculation of it; No. 8 was the term of the contract; No. 9 was the repurchase of the stock on the termination of your contract; No. 10 was the method of payment of dividend on stock, the proportionate payment of dividend on stock; No. 11 was after your termination, a consultant arrangement. And No. 12 was a special arrangement permitting you to defer your -- the immediate putting up of the investment. Those were all matters covered in this memo, weren't they?

A Yes.

Q Now, did you discuss at that time the -- with Mr. Zoppelt the election of the board of directors of Sossner?

A I don't recall.

Q How about a stock voting trust?

A I did not.

Q Further capital investments by you?

A No, I did not.

Q Did Mr. Zoppelt say that any losses in Sossner were going to come out of your salary?

A No.

Q Would you have accepted that provision?

MR. LEDWITH: I object to this, your Honor, as being a hypothetical. Not only that, an unreasonable hypothetical.

THE COURT: Yes, it is a hypothetical. I don't think it's -- I don't think it achieves what you are looking for anyway. I will sustain the objection.

Q When you negotiated with O.S.G. during this period, what you wanted to do was a chance to make an investment and -- and to obtain a job where you'd be your own boss, wasn't it?

A I had to be my own boss.

EK fls.

(Continued on next page.)

Q You wanted to do pretty much what you could by yourself, didn't you?

A Yes.

Q Without too much specific direction or control?

A No.

Q You were interested or you were perfectly willing to accept the direction and control of O.S.G. if you obtained a job with them?

A Yes.

Q But you weren't ready to make an investment on June 13th, were you, of $100,000?

A Yes.

Q That is what your memorandum says, is it, sir?

A My memorandum says I am prepared.

May I read it?

Q Sure.

A It reads:

"My statement that I will invest $100,000 in original purchase still stands."

Q But you weren't ready to put up --

A "Some sort of special arrangement to be made on terms of payment of this amount."

Q But you weren't ready to put up the dollars at that time?

A Not in one lump sum in one minute.

Q When the bond and stock market made it apparent -- when the bond and stock market permitted you to sell your bonds and stock without a loss?

A That would have been one factor.

Q After June 13th, when did you next hear from O.S.G.?

A I think I heard from them on the evening of June 15th.

Q Did they offer you a job at that time?

A No, they just told me that they -- well, in effect they said they had completed negotiations with Brancato.

Q Now, I believe you testified that by letter dated June 2nd -- I am sorry, July, July 2nd, that you were offered a job as Vice President in charge of manufacturing by O.S.G.?

A Yes.

Q So they did in fact offer you an executive position with the corporation?

A Yes.

Q And they indicated in that letter that you would have a $30,000 salary and various perqs (prerequisites)?

A Yes.

Q And that this might very well lead to a more

lucrative position in the future?

A Yes.

Q And you rejected that after your discussions with Mr. Demery, didn't you?

A No, not immediately --

Q Well --

A I accepted it with Mr. Demery on the 6th of July. I accepted the job and we had set up all sorts of little details.

Q One of those details was the term of the job, wasn't it?

A That is right.

Q And when Mr. Demery said the term will be one year, you rejected the job, didn't you?

A Mr. Demery didn't say the job would be one year at that time.

Q When did he say it would be one year?

A He told me that on the phone after a week.

Q Then you rejected the job, didn't you?

A Yes.

Q It was quite specifically set out in the letter of July 2nd, wasn't it, that Mr. Demery was responsible for negotiating the term of the contract?

A Yes.

Q So that you knew at that time that you were going to have to make your peace on this contract with Mr. Demery as far as the term was concerned?

A Yes, but --

Q I think you have answered the question.

A Yes.

Q Now, when you saw this letter, you didn't jump up and down, the letter of July 2nd and say, Bob Zoppelt, you violated our joint venture agreement, did you?

A When I first saw the letter, I didn't know that.

Q Now, did O.S.G. ask you in connection with this transaction to perform any services? Did O.S.G. ask you to perform any services in connection with this transaction?

A Yes and no. I suppose.

Q What is the "no" side of that?

A The no side? Well, the no side of it was, Please play it low key and at Mr. Brancato's request to sort of stay out of the negotiations.

Q And the yes side?

A The yes side, I was willing and able and ready to do anything they asked me to do.

Q Did O.S.G. -- my question was did O.S.G. ask you to do anything in connection with this transaction.

A They explained that Mr. Brancato wanted me to stay out of the picture due to employee relations when I asked.

Q Let me go back to your initial conference at which most of the agreements, whatever they were, and if in fact they were formed, seemed to have arisen, that is on May 14th:

What did you expect as a result of these discussions on May 14th with O.S.G. as compensation for you?

A At least as much as I received working for Sossner.

Q That is an executive position with --

A President.

Q With a salary and with a profit potential.

A I expected to be President of the company, not in an executive position.

Q And the right to make an investment in the acquired company?

A Yes.

Q And you never discussed a percentage fee as a finder, as a joint venture, or as anything else with O.S.G. as your compensation?

A Not until about the 15th.

Q Did you discuss a percentage fee with O.S.G. on the 15th?

A Indirectly.

Q But not directly?

A Not directly.

Q Now, where have you been employed since, and in very summary fashion, where have you been employed since August 1, 1973, Mr. Flammia?

A I acted as a consultant for three or four months.

Q Three or four months to whom?

A The Bru-Baker Tool Corporation.

Q That takes us to when?

A The middle of November.

Q Then what did you do?

A I set up my own business.

Q Your own business since then?

A Yes.

Q Any consulting fees or arrangements? Were there any consulting fees or arrangements with other manufacturers during the period November 1973 to date?

A I did one consulting job for another company, yes.

Q Were you paid for it?

A Yes.

Q How much did you make from Bru-Baker?

A I was paid $150 a day plus $25 per diem plus

transportation.

Q And how long did that go on, three or four months, or what approximately did you make?

A It lasted three or four months and I told them I wanted to stop and open a business.

Q Can you give me a round figure as to how much you earned?

A September, October --

Q It is approximately three months. It is approximately ninety days. I assume you didn't work all of those days.

A No, I only worked four days a week.

Q You only worked four days a week?

A That is right.

Q Three months, four, that is twelve weeks, twelve weeks times four is --

A Forty-eight.

Q And forty-eight times --

A Seventy-two.

Q Well, you made $125 a day?

A $150 a day.

Q So that will be 48 and 7, and you got it right, $7,200.

A Yes.

Q Now, what was the other consulting agreement that you had in 1974, or was it 1975?

A '74.

Q How much was that?

A That was one specific job and I just sat around figuring on it; however I charged the man $500.

Q What about your own company, Pioneer? Have you been drawing a salary from Pioneer?

A Yes, a small salary.

Q What is that salary, sir?

A At the present time it is $300 a week.

Q $300 a week and you have been doing that since mid-November of 1973?

A No.

Q When did that start?

A It probably started, it probably started -- I probably started paying myself a reasonable salary about the beginning of this year.

Q So the beginning of 1975?

A That is right.

Q $300 a week?

A Yes.

Q Now, what compensation did you receive during 1974?

2 A None, except my investment.

3 Q But what I am looking for -- well, you didn't do
4 any other work other than the work for your own company?

5 A Yes.

6 Q And you were not paid, your company didn't pay
7 you for that work?

8 A No.

9 Q But why was that, Mr. Flammia?

10 A I was starting a new company from scratch and
11 it didn't make sense to invest money in my company and pay
12 myself a salary and then invest it back again. It was just
13 the kind of --

14 Q Now, did you have any authorization from Mite
15 after you left its employ to seek a purchaser for Sossner?

16 A No.

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18 (continued next page)

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Q Mite did not ask you, after you left it's employ, to perform any services with respect to Sossner?

A No.

Q Yet you wrote to Mite asking for a finder's fee in June of 1973, didn't you?

A Yes.

Q Did you consult with O.S.G. before you wrote that letter?

A No.

Q Was that consistent with your position that you were a joint venture to ask for a finder's fee from Mite?

MR. LEDWITH: I will object, your Honor, that calls for a conclusion.

THE COURT: I will allow it if he can answer it.

No, I will sustain the objection, I think that is a question for me, not for him.

It is a question of opinion.

I will sustain the objection.

BY MR. LAMBERTON:

Q When you went to Dunbar Development Corporation and sought financing from them to purchase Sossner, did you discuss with them the fact -- did you discuss with them the possibility that you would claim a finder's fee in connection with such transaction?

A No.

Q Is it consistent with the role of a purchaser of a company to ask the acquired company for a finder's fee?

A I don't know.

Q You were kind of working both sides of the street in those circumstances, weren't you?

MR. LEDWITH: Objection, your Honor.

THE COURT: I will allow it.

A Possibly, in this case it was a sixth sense.

Q So in addition to what you have testified to was a proposed position and a proposed chance to invest, you were also seeking a fee from Mite as a finder?

A I asked whether or not Mr. Brancato thought that my position had any value, and I said I would appreciate his comments; if I remember my letter, I was asking, I wasn't demanding anything.

Q When that was turned down, did you turn around and go to O.S.G. and say, I want a finger's fee?

A No.

Q Mite never in fact asked you to perform any services in connection with this transaction, did they?

MR. LEDWITH: I will object, he has already answered the question.

THE COURT: Did Mite ever -- he already answered

that question.

Q Mite never offered to pay you for any services in connection with it?

A No.

Q That is the sale or the potential sale of Sossner?

A No.

MR. LAMBERTON: I believe that is it.

Wait just a second, I will consult with my co-counsel, if I may, your Honor.

(Mr. Lamberton and Mr. Mitchell then conferred.)

BY MR. LAMBERTON:

Q Did you make any money from your investments in 1974?

Did you receive any income from your investments in 1974?

A Yes.

Q Can you tell me the amount of that income?

A No.

Q Approximately?

A No.

Q Can you tell me the rate of return on your $100,000 in bonds and stocks that you were not obliged to put up because you did not invest in Sossner?

A In some of the bank books, the ordinary interest, in some of the mutual funds, the ordinary rate of dividends --

Q The bonds?

A The municipal bonds, the ordinary rate of interest, five-eighths, in three, in two, all various denominations.

Q So whatever income there was during the period of August 1, 1973 to date, to date was arising from the fact that you were not investing the hundred thousand dollars in Sossner?

In other words, you didn't have to liquidate your investment to make this new investment in Sossner, did you?

MR. LEDWITH: I object, your Honor, that is self-evident.

THE COURT: No, it is perfectly proper.

A I didn't liquidate my investments for Sossner, I did not liquidate because the deal didn't consummate.

Q So you have been receiving income from those investments which you would not receive if you had liquidated them?

A I have invested it in my own company.

MR. LAMBERTON: Thank you, your Honor.

(Continued on next page.)

REDIRECT EXAMINATION

BY MR. LEDWITH:

Q Mr. Flammia, there was a question posed to you yesterday about a sharp leveling off of sales:

Do you recall, first of all, when that sharp leveling off occurred?

A Well, actually the industry got into a price war back in 1970, it all fell off because people weren't selling tools for the right price and business became a little bit stagnant.

Q Is that when Mite had acquired Sossner?

A That is right.

Q Did you forecast an increase in sales in the near future?

A Yes.

Q And did you ask for additional machinery and material so that you could be prepared to meet this new opening of the market?

A Yes.

Q Did you get it?

A Not in its entirety.

Q O.K.

Now, you indicated that when you heard about this balance sheet that was prepared by Mite and given to O.S.G.,

sometime in June I think you said, that you noted that the building, the Lynbrook building was omitted from the balance sheet.

Q And that building had belonged to Sossner, had it not?

A Yes.

Q And it had value?

A Yes.

Q What was the value that was indicated?

A I think it was valued at $160,000.

Q And when you noticed that that was not on there and when you were told it was not on there, did you then tell M oppelt that you could probably get the company for probab , less than two million dollars now?

A Yes.

Q The question was posed to you whether or not your primary concernwas getting a job when you were working this deal out, may I ask you, did you have any interest in getting back to Sossner during all of these years?

A Yes.

Q And did you have an interest in watching Sossner to begin resuming growing with --

MR. LAMBERTON: Objection, your Honor, leading.

THE COURT: Don't lead.

BY MR. LEDWITH:

Q Besides simply getting a job, did you have any other interest in this whole transaction while you were chatting with Mr. Zoppelt and Mr. Osawa on May 14th?

If you did have any other interest, tell us what the other interests were.

MR. LAMBERTON: It is a double question.

THE COURT: He can take the two questions at a time.

Did you have any other interests?

THE WITNESS: Other interest?

THE COURT: Other than the one that you expressed about getting a lifetime job.

THE WITNESS: It was my great desire to get back with Sossner because of the 25 years of work that I had put into it, I had helped it to grow and I felt that with working with a cutting tool company of the stature of O.S.G., and I thought I would really be able to do the things that I thought my company or Sossner could do, and that was my basic and primary interest in the whole transaction, that is, just to get back, and to put it in a corny way, to get back with my own wife, it was my baby and I wanted to give it all I could.

Q And you wanted that plus an interest as a part-owner?

A I wanted to be a part-owner for two reasons:

Number one, I thought it would be good for me, good motivation;

Number two, I was trying to convince O.S.G. that I was sincere, and that even with a rather in some cases dismal forecast that I had a lot of faith in the ability of Sossner to succeed.

Q O.K.

Now, you indicated that you started up the Pioneer Company from scratch; is that right?

A Yes.

(Continued on next page.)

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Q The first time you started taking any money out of it in terms of salary was in the beginning of 1975?

A That is right.

Q And I am asking you, during 1974 did you work for Pioneer?

A Yes.

Q Did you work hard?

A Very hard.

Q How about 1975, did you work hard?

A We are still working very hard.

Q Did you put any money into Pioneer to get it going from scratch?

A So far I have put in $106,000, into Pioneer.

MR. LEDWITH: Thank you, thank you very much. No further questions.

MR. LAMBERTON: No further cross-your Honor.

THE COURT: You may step down.

(Witness excused)

MR. LEDWITH: My next witness -- well, may I just have a moment to speak with him before he takes the stand?

THE COURT: All right, we will take a five-minute recess.

(Recess taken)

MR. LEDWITH: May I call Professor Aaron Warner to the stand?

P R O F E S S O R A A R O N W A R N E R, called as a witness in behalf of the Plaintiff, having been duly sworn by the Clerk of the Court, testified as follows:

THE COURT: You are a Dean at Columbia?

THE WITNESS: That is right.

THE COURT: What are you a Dean of, sir?

THE WITNESS: Dean of the School of General Studies.

MR. LAMBERTON: Are we going to swear the witness?

THE COURT: He has not been sworn?

THE WITNESS: I have been sworn.

THE COURT: I think he was just before I conducted my colloquy.

MR. LAMBERTON: I am sorry.

DIRECT EXAMINATION

BY MR. LEDWITH:

Q Professor Warner, would you set forth for the Court your educational background and your professional background, as well?

A Well, my educational background is that I was

graduated with an A.B. degree from New York University in 1929. I have an LL.B. degree from Harvard Law School in 1937 and a PH.D. in Economics from Columbia University in 1954.

This is my experience. I practiced law in Boston from 1933 to 1936. I then went to Washington where I served in the Government with three agencies, the National Labor Relations Board, the Railroad Retirement Board, and the Office of Price Administration, both as a lawyer and as an administrator.

I then went off to war for several years, in the Navy.

I have been at Harvard University, in 1946 as an Associate Professor and a full Professor in 1961. I hold that position to the present time.

My major fields of interest are economic theory, labor economics and industrial organization.

I have served in many cases as an arbitrator of labor disputes. I have been a consultant to federal agencies, including the Department of Labor, the Maritime Administration and the Department of Commerce.

I have served a number of years as a consultant to the International Labor Organization at Geneva, Switzerland.

I formerly had been Chairman of the Columbia University Seminar on Technology and Social Change, and I

have published a number of works in labor economic theory and technology.

I have extensive teaching and administrative experience. I am also associated with an economic consulting firm which specializes in the evaluation of human services.

My competency as a teacher includes the field of mergers and acquisitions, and as a labor economist and an arbitrator I am accustomed to dealing with the complex of situations both in the upper and lower bounds as well as in bargaining situations, etc.

Q Thank you very much, Professor Warner.

Prof. Warner, you were consulted by me in connection with this case; were you not?

A That is right.

Q And I asked that you review the facts of this case in order to give an opinion?

A That is correct.

Q Professor, will you at this time assume the following facts as being true and accurate:

That there was a gentleman by the name of Jerry Flammia who graduated from high school in 1935;

Then in 1937 he began a career in the Industry with the Bay State Tap & Tool Company, in 1937;

That he started as a machine operator and then

working his way up in that company to a position of a time study engineer in charge of getting that company to have an efficient operation and good production standards.

That he then went into the Service for two years and returned to Bay State in 1948 where he became a night foreman in charge of the entire operation and also was in charge of the experimental department and given the assignment of designing and devising machines and tools;

That he then left that company and started with Sossner Tap & Tool Company as the factory superintendent in 1948, and that in 1952 he had occasion to purchase ten per cent of the shares of this company and become the Vice President;

That he then became the President in 1967;

That during this time he had occasion to design and implement three rather unique processes in connection with taps, one called the electro-lube, which is a special lubricating technique, and also another technique known as nitriting, which is that by applying certain salts to a metal tap it causes the exterior of the tap to be specially hardened so as to allow a longer time and to make a cleaner cut;

That the combination of these two processes, plus a heightened measure of geometric development of these

made the product of his company, the Sossner Tap & Tool Company, a rather unique and special product which got a higher price on the market than the ordinary tap of competitors;

Would you also assume that a company called Helicoil purchased this Sossner Company, including Mr.Flammia's shares, in 1967 and gave Mr. Flammia a three-year contract to be employed as the President of the Company at an annual salary of $35,000 a year;

Assume further that in 1970, the Mite Corporation purchased the Sossner Tool Company and Mr. Flammia remained as President at the same salary, $35,000 a year;

And that in 1972 an incentive program was designed for him based on sales, and that besides the $35,000 salary he also received $5,000 incentive payment for the year 1972;

Would you assume that the Sossner Company itself was a moderate sized -- I am sorry, a smaller-sized company in the tap field;

Would you also assume that it has a fine reputation for an excellent product due to its special processes;

That its gross sales were in the area of a

little more than $2 million in 1972;

Assume that the company had 99 employees, had nationwide sales and primarily to the aircraft industry in California, which industry acquired the special taps with the special treatment for its various special purposes;

Would you also assume that since 1948 Mr. Flammia was very much responsible for taking the Sossner Company from a company with a rather modest sales, I think it was $125,000 and twenty-five employees, and by developing the production techniques and the efficiency of the production was able to develop this company to the size it was in 1972 of gross sales of $2 million and a work force of 99.

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BY MR. LEDWITH:

Q (Continuing) Would you assume that when the Mite Corporation acquired Sossner that the people at Sossner with whom Mr. Flammia primarily dealt were a Mr. Leo Brancato, who was the Executive Vice President of Mite, Mr. Blinken, who was President of Mite, Mr. Swanson who was the Group Vice President, and a Mr. Stuart Hampton, who was the Personnel Manager.

Would you also assume, Professor, that the tap industry generally is a small industry nationwide; that its gross sales -- entire gross sales of the tap industry is $100 million; that there are between 25 and 30 tap companies in the country; that there are five or six large companies; and the balance of the companies are about the same size as Sossner with sales of approximately $2 million.

Would you assume that the executives of these thirty-five or less companies are pretty well known to each other, and reputations are known to each other. And the quality of the products of each of these companies is pretty well known to each of the other companies.

Would you also assume that in the years that the Mite Corporation owned Sossner that Mr. Flammia had prepared four cash reports for the Mite Corporation's benefit relative to Sossner's status, relative to its needed capital

investments for the future of the company, and relative to the potential sales market, and relative to the potential sales of Sossner, setting forth more or less the economic forecast for the company based on certain investments to be made.

Would you also assume that besides giving this forecast to Mite Mr. Flammia also had discussions with the executives of the Mite Corporation relative to future development of the Sossner Company.

Would you also assume that Mr. Flammia advised the executives of the Mite Corporation that the market for tap products in this country was going to be good shortly following the 1970-71 period. And that he had traveled around the country for six months developing customers and sales. And that he advised these people that Sossner had a large market and could make substantial sales provided that the Sossner Corporation was equipped with new machinery and certain other capital improvements in order to meet the demands of the market that was there.

Would you also assume that for the most part his requests for capital improvements were not met. They were met only to the extent that the machinery currently at Sossner was depreciated in the accounting sense.

Would you also assume that Mr. Flammia advised Mite executives that without the necessary infusion of

capital that he felt that the Sossner Corporation would become stagnant; that it would not develop. That the Sossner Company would not meet the expectations of the Mite Corporation in terms of proper return.

Would you also assume that Mr. Flammia was concerned for his own personal situation in view of the fact that Sossner apparently was headed for a future of floundering rather than having any kind of direct economic direction. Would you assume that Mr. Flammia advised the Mite personnel of that fact?

Would you assume also that in 1972 Mr. Flammia advised the Mite people that he was -- he desired some form of security in the Sossner Company in that he had suspicions that the company was for sale. And that hewanted to ensure that he would havea position with Sossner in the future years.

Would you assume that the Mite executives advised Mr. Flammia that they would not give him an employment contract. That they would not make any commitments to him.

And would you also assume that Mr. Flammia was advised by two executives of the Mite Corporation that in order to resolve the problems which were evident within Sossner that he should purchase Sossner. And would you assume that he was advised by Mr. Leon Brancato that before getting any further into this Mr. Flammia should contact his attorneys

and his accountants in order to put together a plan for such a purchase. And that Mr. Brancato advised Mr. Flammia that once his plan was put together that the Mite Corporation was considering assisting with the financing of it.

Would you assume that Mr. Flammia met with his accountants and attorneys, and upon reviewing the various data that he had available to them, that they recommended an offer of 1.6 million dollars for the purchase of Sossner.

And would you assume that Mr. Flammia advised Mr. Brancato of this fact, and that he was willing to make that opinion in the purchase of the company.

Would you assume further that Mr. Brancato advised Mr. Flammia that what Mite wanted for a purchase price was the amount of its investment in the company which amounted to slightly over $2 million as a bid.

Would you assume that the negotiations went no further than that. The offer was not up and the request for payment was not down. It just sort of fizzled out, as was said.

Would you assume that Mr. Flammia then indicated to the personnel of the Mite Corporation that in view of the fact that there was no personal advancement for him, and that there was no advancement for the company, that he resign.

And would you assume that after having resigned,

Mr. Flammia was aware that the Mite Corporation could be purchased provided the purchase price could be met. And that he contacted two different companies requesting that they review the forecast that Mr. Flammia had prepared in 1972 indicating the needs of Sossner, primarily with the idea that they know what kind of capital infusion he was talking about in order to make Sossner succeed. And that he advised them of the purchase price of Sossner. That one of these companies reviewed the matter and turned the deal down based on the fact that there was too much capital to be invested to their liking.

Would you assume that a second company known as the New York Twist Drill did review this material and was seriously considering this kind of deal, although there was no concrete formulation yet made, but their opportunity to make any acquisition was cut off by the fact that another company did in fact purchase this Sossner Company.

Would you assume that Mr. Flammia, having resigned from Sossner then formed his own corporation known as the Pioneer Tap Company. And he got as far as seeing a lawyer who drew up the corporate papers for him. And in order to get his company going he then went out to a convention in Chicago for the tap industry people, and while there stopped off to visit with Mr. Jack Shufelt of the O.S.G. Tap

Company.

Mr. Flammia had known Mr. Shufelt by reputation, and he also knew of the O.S.G. Tap Company by reputation and that it had a good product.

Would you assume that Mr. Flammia was aware O.S.G. was primarily a Japanese company which produced taps.- And that the purpose of Mr. Flammia's visit to Mr. Shufelt was to see if he could buy semi-finished taps which he would then finish in his own factory and then put the name Pioneer on it and then sell it under his own brand name.

Would you assume that during Mr. Flammia's discussions with Mr. Shufelt that Mr. Shufelt then suggested that he meet with Robert Zoppelt, Executive Vice President of O.S.G. And that they then had lunch together, Flammia, Zoppelt and Shufelt, and that they discussed Mr. Flammia's suggestions for the business for his own company. And that as they talked the discussions moved in the areas of discussing O.S.G., its desires for economic growth, the fact that it had acquired a company in California, and the fact that it wished some day to open up a tap manufacturing plant or acquire a tap manufacturing plant on the eastern seacoast; also that it was seeking a drill manufacturing company eventually; that these were plans generally for its economic future.

Would you assume that Mr. Flammia having heard

this became aware of the fact that there was a business opportunity available here.

Would you assume that it was always Mr. Flammia's desire to get back to Sossner and to be the President of that company again in that he developed it since 1948 into a fine proud company, and that it was his desire to get back under the proper economic circumstances where he could have the necessary investment in the company to make it grow with real direction.

Would you assume that Mr. Flammia recommended to Mr. Zoppelt and Mr. Shufelt that they give serious consideration to O.S.G.'s acquiring of Sossner. That upon the broaching of this subject Mr. Zoppelt contacted Mr. Osawa, who is the President or has a similar position with O.S.G. Mr. Osawa requested that all the men discussing this matter then come into the office. That upon entering the office the discussions ensued and generally the discussions were to the effect that Sossner was more than available to the sale and that the purchase price of Sossner would be $2 million.

Would you assume that the forecast for the company -- the Sossner Company was given to the O.S.G. people, and Mr. Flammia's indications to them of the potentials of the company, of all aspects of the company, were given to

the O.S.G. people. And assume that this information was the information of the man who was very recently the President of the Sossner Tool Company and probably more than anybody else in the world, the information that he had available to these people was what was needed.

Assume that discussions followed, that should O.S.G. have -- should Sossner first of all be available for sale, and should O.S.G. have an interest in securing the company or acquiring the company, that it was agreed that Mr. Flammia would run the company, would be the President of the company. That he would make an investment of $100,000 in the purchase price of the company and would acquire a percentage of whatever shares were necessary, five per cent, I believe.

And would you assume that the people from O.S.G. indicated that they would be very happy to have Mr. Flammia act as the President of the company because they did not have personnel in their company qualified to run the company, or available for the company.

Would you assume that they were also very happy with the idea that Mr. Flammia was willing to invest $100,000 in this operation because, one, he indicated he was very much a bona fide joint venturer, if you will, or bona fide business companion, and also indicated that he had a very

genuine belief in the prospects of the Sossner Company.

Would you assume, also, at this time that Mr. Flammia had a reputation for his some twenty-five or so years in the tap industry, and that his reputation was one of being an excellent production man, knowledgeable in the field, capable and energetic, and a reputation for being a very honest and forthright official.

Would you assume that Mr. Zoppelt of the O.S.G. Company while discussing all this assured Mr. Flammia that should he take on the position of President under all these circumstances that he should have a salary of at least $40,000 a year. Mr. Zoppelt painted a picture for Mr. Flammia by indicating various business expenses that he could take. That he could probably eventually wind up with an income of over $100,000 a year with Sossner under O.S.G's control.

(continued next page)

DIRECT EXAMINATION

BY MR. LEDWITH: (continuing)

Would you assume also that Mr. Zoppelt and Mr. Osawa assured Mr. Flammia that their company had the necessary capital in order to initially make the acquisition of Sossner, and also to make the infusion of capital necessary into Sossner in order to get the company moving in the direction set forth in Mr. Flammia's forecast.

Would you assume that they advised Mr. Flammia that the O.S.G. Company in Japan was the largest tap manufacturer in the world?

Would you assume that these initial matters were all generally agreed to when Mr. Flammia said, "This is all well and good but let's check with the Mite Corporation and make sure that that company is available for sale."

That then he telephoned Mr. Brancato of the Mite Corporation and inquired as to whether or not that company was for sale.

That Mr. Brancato said, well, he really couldn't say that at this time. He would like time to think it over.

Mr. Flammia shortly thereafter left the company of the O.S.G. people and returned to the convention.

Assume that Mr. Zoppelt called Mr. Flammia on

May 15th and Mr. Flammia advised Mr. Zoppelt that he did not notify Mr. Brancato of the name of the people who were interested in acquiring Sossner. And that he felt that Mr. Brancato would not give the matter serious consideration unless he notified Mr. Brancato that it was O.S.G. that was interested so that Mr. Brancato could make the necessary inquiries into the financial strength of O.S.G.

Assume that it was agreed that Mr. Flammia was to contact Mr. Brancato again and advise him of the fact that O.S.G. was the interested company.

Assume that on May 16th Mr. Flammia did call Mr. Brancato and did advise him that it was O.S.G. that was the interested party. And that Mr. Flammia urged that --

MR. LEDWITH: Withdrawn.

Q (continuing) -- that he was notified of that. Assume thereafter that Mr. Flammia addressed letters to -- one to Mr. Brancato more or less confirming these discussions, and assume that he addressed another letter to O.S.G. in which he indicated that he confirmed what their discussions were to some extent and advised that Mr. Brancato would then get in touch with Mr. Flammia.

And assume further that on May 24th Mr. Brancato did call Mr. Flammia and asked Mr. Flammia again for the names of the executives at O.S.G., and that Mr. Flammia

gave the name of Robert Zoppelt and Mr. Osawa, and once again gave the phone numbers.

Assume then that phone calls went back and forth between O.S.G. and Mite, and a pro forma balance sheet was prepared by Mite and sent over to O.S.G.

Assume also that a letter was addressed from O.S.G. to Mr. Flammia thanking him for making the contact and assuring him that O.S.G. is the ideal company for the acquisition of Sossner in that they had the same ideas in mind more or less that Mr. Flammia had.

Would you assume that Mr. Flammia then addressed a letter to the Mite Corporation saying in essence that he thought perhaps he might be entitled to afinder's fee for what he had done for them.

Assume further that Brancato responded that Mr. Flammia was in no way entitled to a finder's fee. And if he was so entitled he should look to the buyer.

Assume then the next day Mr. Flammia and Mr. Brancato had a conversation relative to this matter of the finder's fee. And Mr. Brancato said to Mr. Flammia, "What is the finder's fee for? I understand that you are to be the president of Sossner. That you are going to have a cutting tool company for a partner. That you are going to be part owner of the business. Isn't that sufficient for your

finder's fee?" And that was the extent of that conversation.

Would you assume then that sometime thereafter Mr. Zoppelt and Mr. Osawa came to New York in order to look at the Sossner facilities. That there were certain things that had been gone into pending acquisition.

Assume that Mr. Zoppelt then contacted Mr. Flammia and asked him if he would set forth his suggestions for employment, and that these suggestions were written down on a piece of paper and given to Mr. Zoppelt.

And the documents I have been referring to I will hand up to you in just a few minutes. I take it you have already had a chance to look at most of them, haven't you?

A I Have.

Q Assume that Mr. Zoppelt inquired about -- I am sorry -- assume that Mr. Zoppelt was questioning about the hundred thousand dollar investment set forth in the list I mentioned, and also assume we have a question concerning fifty per cent of the profit which Mr. Flammia set forth in that list, but that there were no real discussions relative to this list. And that after Mr. Flammia having handed that to Mr. Zoppelt, and the two questions being posed, without really the answers, that that was the extent of the discussion as to those suggestions for employment.

Assume also that the discussions between Mite and O.S.G. continued. And that ultimately a letter of intent was signed between these two corporations relative to O.S.G.'s acquisition of Sossner.

Assume that thereafter Mr. Flammia was requested to go to Chicago or to a suburb near Chicago in order to discuss with Mr. Zoppelt and Mr. Osawa the final arrangements relative to his employment there. And that he met with Mr. Zoppelt who handed him a letter indicating that he was not to be the president but rather to be a vice president in charge of manufacturing.

Assume that his salary was proposed at thirty thousand dollars a year plus other things.

Assume also that that letter had a provision which indicated that before any final agreement could be made Mr. Flammia would have to make arrangements to meet with a fellow named Warren Demery who O.S.G. had previously retained to be the president of Sossner. And that the letter provides that in order to finalize the fact of Mr. Flammia's working with Sossner, Mr. Demery would have to agree to various terms.

Assume that during the time in Chicago Mr. Zoppelt agreed that Mr. Flammia would have a contract for a period of one year in this position.

And assume that thereafter Mr. Flammia had contacted Mr. Demery and that there were discussions relative to the fact that Mr. Flammia had already had an oral agreement with Mr. Zoppelt and that he asked Mr. Demery to get for him a two year contract.

And assume that Mr. Demery then returned with an offer of a contract for a period of one year which Mr. Flammia felt was entirely unacceptable.

Incidentally, would you also assume that while out at Chicago around July 3rd or 4th Mr. Flammia met with Mr. Zoppelt and Mr. Osawa and that during a discussion there Mr. Zoppelt was outlining the investments in the Sossner Company, and that he indicated that Mr. Flammia would put in five per cent or a hundred thousand dollars and that Mr. Zoppelt would be putting in ten per cent, and the balance would be owned by O.S.G.

And assume that Mr. Osawa advised both Zoppelt and Mr. Flammia that O.S.G. was going to acquire the entire amount and that neither of these gentlemen were going to be permitted to make any investment.

Assume then at this point Mr. Flammia was no longer involved in the Sossner deals. And that he then went to work setting up his own company after having taken on several consultation jobs. That he started his own company,

the Pioneer Company, from absolute scratch. That he invested over a period of a year or so the amount of a hundred and six thousand dollars. And that for over eleven months has not been taking out any salary whatsoever. That salary is now in the sum of three hundred dollars a week.

Now, Professor, assume further that ultimately the Mite Corporation did sell the Sossner division to the O.S.G. Company at the purchase price of two million dollars, as Mr. Flammia had indicated to it.

And assume that from the time Mr. Flammia first uttered his first syllable relative to the possible acquisition of Sossner, up until the day of the actual transfer of title, approximately two and one half months had gone by.

Now, Professor, having assumed these facts and having before you the various documentary exhibits which I will give to you, would you, sir, have an opinion as to the value of the services which Mr. Flammia rendered to the O.S.G. Company?

MR. LAMBERTON: Your Honor, I object. I believe that in the assumptions made by the counsel for the plaintiff there are three or four potential series of liability stated. And I would ask counsel to narrow this down because some of these things are not within the province of an expert. If counsel is

seeking a --

THE COURT: I assume he is seeking a quantum meruit type of value for services --

MR. LAMBERTON: But if this is for the breach of a joint venture agreement, your Honor --

THE COURT: He has not asked him what damages he suffered. He has asked what the value of his services were. I assume that's the question.

Don't read back the whole question but just read back that last part.

(Record read.)

THE COURT: I think that's a little different than the breach of a joint venture contract, the damages question. I think what he is seeking if I understand it, is a quantum meruit value of the services of Flammia in this gentleman's opinion.

MR. LAMBERTON: I further object, your Honor, on the grounds that the assumptions do not accurately reflect those in the record.

THE COURT: In what respect? I tried to follow it fairly closely. I think there are one or two very minor exceptions, but I think it is fairly accurate based on the plaintiff's assertions.

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DIRECT EXAMINATION

BY MR. LEDWITH: (Continuing)

MR. LAMBERTON: I believe, your Honor, that he -- it has assumed the truth of a number of disputed facts and those facts where there is no indication, for example, in the-- that Mr. Flammia, for whatever relevance it is, in the period between 19 -- the late 1940's and 1967 was the reason for the rise of --

THE COURT: No, the rise was established and he was the -- one, if not the prime mover in the company, and that inference could be drawn, and I think he's asking the Court to draw that inference. I understand that.

What is your next one?

MR. LAMBERTON: There is no indication, the evidence does not reflect, that Mite Corporation refused to invest capital in Sossner. There is no indication --

THE COURT: Wait a minute. Let's hold it right there. The statement was that they refused to invest anything further than they -- the amount -- the depreciation each year on an annual basis that was accrued and they were not willing to accumulate any of that depreciation. That was the testimony I recall

and I think that was fairly accurately stated.

What is your next?

MR. LAMBERTON: The statement was that Mite -- your Honor is correct. Mr. Flammia did make the statement that they refused to invest above and beyond depreciation.

THE COURT: That is what Mr. Ledwith asked. That is the way Mr. Ledwith posed it.

I posed it slightly differently. I assume the good dean got my message. I do not think it is too material which way it was, whether they refused to invest any more than the depreciation or more than the depreciation annually and refused to accumulate it. The latter is my recollection.

MR. LAMBERTON: It is not a full reflection of the fact. It does not reflect the cut in his salary, Mr. Flammia's salary, by Helicoil in 1967 from forty five to thirty five thousand dollars.

THE COURT: All right. Take that amendment. He was making forty five thousand just before the acquisition by Helicoil and he took a cut in salary to thirty five thousand, for at least the first couple of years while Helicoil and Mite owned Sossner, but then that was boosted in the last year to forty

thousand dollars with a bonus arrangement he had.

MR. LAMBERTON: It does not reflect the fact that Helicoil and Mite both refused to raise his salary for a six year period, until 1973, when they did -- they kept his salary at exactly the same level, but gave him the incentive, the sales incentive bonus.

THE COURT: Plus a five thousand dollar straight bonus?

MR. LAMBERTON: No, your Honor. That was an incentive bonus of five thousand dollars.

THE COURT: All right. Brought him up to forty thousand.

Anything else?

MR. LAMBERTON: I'm sure I could -- I assume that I will have a chance to ask --

THE COURT: Of course. You can cross-examine him all you want.

There was one other thing that I think Mr. Ledwith stated. He said there were three inventions and he outlined two, but I imagine the good dean caught that. But with that modification also.

All right. Now do you have an opinion; yes or no?

THE WITNESS: Yes, sir.

BY MR. LEDWITH:

Q And Professor, do you also have an opinion as to what the value of what Mr. Flammia did and what Mr. Flammia said was to the O.S.G. Company?

A Yes, I do.

Q Do you have an opinion as to the value of the information Mr. Flammia provided to the O.S.G. Company?

A Yes, I do.

Q All right. Professor, will you tell the Court what your opinion is as to the values of these various contributions Mr. Flammia has made.

THE COURT: Let's take them one at a time.

MR. LAMBERTON: I object.

THE COURT: Wait a minute. One at a time. The value of the services of Flammia.

MR. LAMBERTON: The services and then let us, by all means, take these one at a time.

THE COURT: Relax, Mr. Lamberton. We will get them one at a time.

MR. LAMBERTON: Yes.

MR. LEDWITH: I asked for the total first and then for a breakdown and he describes the items?

THE COURT: No. Ask for the -- I do not know.

Neither of you two gentlemen have really given me very much of the law on the subject, but I assume I will get it eventually.

Let's take them in the breakdown status and then you can add them, if you wish.

Can you do it, dean?

THE WITNESS: Yes. Any way you like.

THE COURT: Let's take the value of the services of Flammia as you see them for what Flammia did for O.S.G.

THE WITNESS: As I reviewed the facts and assumptions, sir, I come out with about five separate areas of services that I'd like to discuss.

THE COURT: Yes.

THE WITNESS: First, I believe that thanks to Mr. Flammia's efforts, the O.S.G. Company avoided the need for a broker or a finder, and I would therefore assume the standard fee for a broker or a finder, which approximates, what is it, five per cent for the first million and four per cent for the second, Mr. Flammia is entitled to that for his services as a finder, which would come to ninety thousand dollars.

I am also impressed with the fact that Mr. Flammia revealed the reserved price of the seller

which he knew from his own prior efforts as you described them to purchase Sossner. Ithink this was very valuable information and could easily have saved the buyer from paying a premium which might have varied from anywheres from five per cent to twenty per cent of the purchase price. I would put a figure on that of, let's say, thirty thousand dollars. That's an arbitrary figure but I would consider that a minimum.

Third -- from what you say, Igather that Mr. Sossner transmitted to the buyer the knowledge that Mite -- Mite wanted to sell, which enabled the O.S.G. to acquire Sossner very quickly. They didn't have to search for a suitable outlet in the east.

The transaction, as you pointed out, came very quickly, and I regard this as a saving in time and expense of the executives of O.S.G. I understand they're a Japanese company. It would have been I think very expensive for them to spend their agents to find a suitable outlet on the East Coast to investigate that.

I would again arbitrarily assess that at twenty thousand dollars, as a minimum figure.

BY MR. LEDWITH:

Q Professor, may I interrupt you for a moment?

A Yes.

Q Will you assume that this Japanese company also has offices in Chicago and that it has Chicago based personnel, employees and what have you, there, who also had the capabilities of looking into possible acquisitions on the East Coast?

A I fully understand that.

Q Sorry.

A I include that in my estimate.

Q I see.

A Then another point, I judge from the -- from the information that I saw and what you have stated that Mr. Flammia, who had considerable knowledge of the operations of the company had, indeed, been very instrumental in its growth and development, eliminated considerable uncertainty for the buyer by communicating his personal knowledge to him, made the buyer much more readily willing to make the purchase.

As I understand it, the -- Flammia had built up the company, was interested in the company, was willing to invest his own time and his own money and gave the -- if I am not mistaken, he gave the buyer information which gave

details of the operation of the company, its technology, its market prospects, its labor force, its financial prospects.

In this respect, I think that Mr. Flammia's services to the O.S.G. were very unique and could not be duplicated by anyone else and that they had reason to rely on this type of unique information and service. I think that was an extremely valuable contribution and I put a price on that of fifty thousand dollars, considering the gross value of the undertaking.

I think also to be taken into account, although I haven't given this any figure, is the opportunity cost for Mr. Flammia. He forfeited any opportunity he might have had to acquire a share in Sossner through other companies, as he pointed out. Since the transaction between Sossner and Mite Company and O.S.G. had been completed, this ruled him out of any prospect of any further interest in the Sossner Company.

He also, as I understood, suspended the operations of his own company, the Pioneer was it?

GR notes fol.

(Continued on next page)

DIRECT EXAMINATION

BY MR. LEDWITH: (Cont'd)

Q Yes.

A So that that transaction could go through, thereby delaying his opportunity to have any advantage of his own operation.

As I say, this is opportunity cost, which is extremely valuable. I am unable to put a price on it but I think it has to be considered in connection with the whole case.

In adding these things up, I come to a figure which is fifty, seventy, one hundred, plus a finder's fee of ninety.

I come to $190,000.

Q All right.

Professor, just very briefly, if I may, you indicated that you felt that Mr. Flammia was entitled to first of all a finder's fee.

May I ask you, briefly, what do you base that statement on?

A On the fact that he found for the -- Brancato is his name -- for the seller, for Mite, a purchaser.

He communicated this information to the

seller, who although, as you say, had not authorized him to do so, accepted ihis finding and indeed, through him, found out the name of the buyer.

Whether or not he inquired for that name, I assume he did, and having gotten the name, it was then in a position to deal with the buyer directly.

So that I think Mr. Flammia up to this point had performed the function of a finder. He brought the buyer and the seller together, which I take it is the legitimate function of a finder.

THE COURT: It is your theory, I take it, that Mite would have added on that finder's fee to its purchase cost to O.S.G. and so he in effect saved O.S.G. that money?

THE WITNESS: That is my theory, sir.

It is customery in these matters for the seller to add on a commission to the buyer over and above what their normal purchase price would be and this is customarily paid.

BY MR. LEDWITH:

Q Okay. Thank you.

You also indicate that the fact that Mr. Flammia was able to give O.S.G the fact of the precise purchase price, that this has a value.

You indicated that there might be a premium up to 20 per cent on the purchase price.

Could you just --

A In acquisitions, I think when sellers are -- buyers are seeking opportunities to buy, generally speaking, there is an anticipation that this will be a five to 20 per cent addition as a premium for making the sale.

Q I see. You also indicated that you -- well, the fact that you found that executive time would be saved in looking for a company?

THE COURT: Let me backtrack.

Is what you are saying this -- do I have it straight?

You are saying for a bargaining position, O.S.G. had a monetary advantage when it went into the bargaining table because it knew what the prior negotiations were?

THE WITNESS: That's correct. And Mite knew that they knew, sir.

There was no opportunity there for bargaining a higher price than Mite had already indicated they would sell for.

THE COURT: I see. But then you only put

a $20,000 tab on that. You are talking about 30 per cent of $2,000,000 is -- could be substantially more.

THE WITNESS: I put a minimum figure because I have no idea what the bargaining there might have arrived at.

I have just indicated that as a -- what I would consider the lowest possible figure.

THE COURT: I said 20. It's 30 you put on.

THE WITNESS: I put on 30, yes, which is what I considered the bottom range.

BY MR. LEDWITH:

Q And Professor, you indicated that Mr. Flammia's unique knowledge, that he gave to O.S.G., had a valuation of $50,000.

Can you give us some reasons for having made this conclusion?

A This is a situation comparable to any situation where you have a person of unique knowledge, a form of economic rent, and economic theory.

He had something nobody else had and again I -- I can only estimate what that might have been bargained out for between O.S.G. and Mr. Flammia had they discussed this.

Mr. Flammia's position as I understand it, was that of a person who was interested in a joint venture.

Perhaps I shouldn't make such a conclusion. -- was interested in investing in the company so there was no negotiation between the O.S.G. Company and Mr. Flammia concerning matters of this kind.

I am estimating that a reasonable bargaining price between the two would have been $50,000.

Q I see.

And how would you have foreseen Mr. Flammia being retained by O.S.G. in this kind of a connection had there been bargaining?

Am I clear?

A I'm sorry.

Q Okay.

You indicated that had Mr. Flammia and O.S.G. begun bargaining about Mr. Flammia's role, let me ask you how would you foresee Mr. Flammia as being retained by O.S.G.?

A In what capacity I would have seen him retained?

Q Yes.

A I would have considered he would have been

retained as consultant.

Q Professor, I'd like to give you a copy of the forecast.

MR. LEDWITH: I think you very much, sir. I have no further questions.

THE COURT: No, wait a minute.

There are two things left open. You want to leave those, the value to O.S.G. and the value --

MR. LAMBERTON: He's already testified --

MR. LEDWITH: I think they've been covered, your Honor.

THE COURT: I see. All right.

CROSS-EXAMINATION

BY MR. LAMBERTON:

Q Dr. Warner, I understand from your testimony that you are a member of the consulting firm.

Could you tell us what the consulting firm does?

A Yes, sir.

The consulting firm is concerned with evaluating the services of people, in cases where value of life is established, in a case of a person who is killed, an accident, matters of that kind.

Q And you're chairman of the Conference on Technological and Social Change?

A I was chairman until recently of the University Seminar on Technology and Social Change, which is a seminar that we -- we have a series of seminars which are in effect conferences between professors and people from off campus.

Q What courses are you teaching, if you remember, sir, at the present time?

A I am not teaching anything at this semester because it happens to be my leave. But when I normally teach, I teach courses in industrial organization and in industrial relations.

Q Those are labor oriented courses?

A The industrial relations course is obviously labor related.

The industrial organization is not.

Q What is the industrial organization course?

A It deals with the position in the community of corporations. It deals with anti-trust problems. It deals with questions of the monopoly position of firms and of the impact this has on the --

Q Is this kind macroeconomics?

A No. It is a combination of micro and macro.

I would say it's mainly micro.

Q I assume in your anti-trust work that you are familiar with Section 7?

A Indeed I am.

Q And do you do any merger and acquisition work?

A No, I do not except from the point of view of teaching.

I do not -- I am not in the business of -- in the --

Q When you were a lawyer, I understand, if -- of my notes are correct -- that you spent from approximately 1936 to 1946 in Washington or -- and basically your practice there was labor related on the Railroad Retirement Board, the NLRB andwith the O.P.A.?

A Yes. The O.P.A. was not labor related. That had to do with price controls.

Q And therefore, I take it, that you did not get into kind of a merger and acquisition situation at that particular time?

A No, I did not, sir.

Q Your teaching is not in this area at the present time?

A No, sir.

Q Your economic consulting firm does not really deal with that particular problem?

A Not generally.

Q Have you ever -- are you aware of customs of investment bankers, for example, with putting together mergers and acquisitions?

A I am, due to knowing investment bankers and talking to them.

Q What does an investment banker do in connection with a -- an acquisition?

A Well, his duties might range considerably, sir. He is primarily concerned with arranging the finances of this transaction.

Q Wouldn't he -- he conduct economic surfeillance of one or both companies to determine whether they fit properly?

MR. LEDWITH: I'll object to this now, your Honor. This is outside the scope of direct, unless counsel wants to.

MR LAMBERTON: Goodness gracious me.

THE COURT: No. I'll allow it.

I understand what he's trying to do and I think I will allow it and see what comes out.

THE WITNESS: As I understand your question,

the investment broker definitely may involve himself in investigation of the parties in that way.

BY MR. LAMBERTON:

Q In other words, to determine how these companies fit?

A Clearly so.

Q Pardon?

A Yes, I say clearly so.

If he's a good investment broker.

Q Sure. They are also concerned with the management personnel of these corporations, are they not, to make sure that the corporations are adequately staffed and professionally manned?

A I think that is true, with regard to top management.

Q Such as an executive officer?

A That's correct.

Q Do they perform, in addition, services in connection, for example, with what I call structuring the deal, which would be both the financing, the underwriting of the particular transaction, which might help one or both parties finance?

A They may or may not, si That would depend

on the negotiations between the parties and what was asked of the broker.

A Their fee would depend on what they were asked to do.

Q And do you -- are you aware of the general fee charged by -- for example, an investment banker in connection with this rather full range of services?

A That would be very difficult for me to answer, sir. I don't think I could give you a good figure. It would depend a lot on the amount of money that was involved in the transaction and there would be a percentage fee, as well as a time factor.

Q What about a bank with a trust department where a small company is -- where the owner of a small company dies and the bank then has -- feels an obligation to the widow to go out and find a purchaser for that particular small business?

Do you have any idea what kind of services they perform in connection with such a search and --

MR. LEDWITH: Objection, your Honor.

THE COURT: I'll sustain it, unless -- you have to clarify a little bit, if the bank is acting as a trustee or executor and is action in that capacity, your questions might have some merit.

If the bank is operating as an agent of the executor or the trustee, it might be quite different.

MR. LAMBERTON: Withdrawn.

BY MR. LAMBERTON:

Q What about the new business division of any standard commercial bank who is interested in acquiring new customers and including companies that had been acquired by existing companies?

Do you know what kind of services they perform?

MR. LEDWITH: Objection, your Honor.

THE COURT: I will allow it.

THE WITNESS: I'm sorry.

THE COURT: I will allow it.

A Again, it would vary a great deal. I mean, the -- the services of a bank officer would depend somewhat on the quality of the officer and his staff.

It would vary all over the lot.

I would assume that a very large bank, which had a very adequately staffed group would make investigations into the matters you asked.

Q Do you know what they would charge for those services?

A No, sir, I do not.

Q Now, --

A I would say that their charge would be substantially over a finder's fee, however.

Q Have you ever participated in a transaction involving a finder's fee?

A No, sir.

Q Your firm does not do so?

A We have not.

Q And you did not as a lawyer?

A I did not.

Q Do you know of any firms that pspecialize in finding --

A I know of firms which do finder's work, in addition to other types of practice.

When you say specialize, there are people in firms who do the specialization. I do know of such cases.

Q In other words, there are people who engage in this transaction, kind of transaction in the regular couse of their business?

A That's correct.

Q But you are not one of them?

A No, sir.

Q Now, we have a number of assumptions that we have gone into with respect to your estimate of the value of these services.

I'd like to make -- ask you to make a couple of assumptions with me.

One of them is that you have a corporation which has been essentially dormant, that is, its sales have no progressed from 1967 to 1973, despite two separate corporations owning it.

You have a manager who believes that the corporations are not truly cognizant of the problems of his particular division. That particular manager goes to two experts and each expert sitting down with him advises him the company is worth $1,600,000, but unfortunately the owner of the company wants $2,000,000.

As a result of that, the executive resigns, despite the fact that he has been very interested in long term tenure as the president or the operating manager of that particular corporation.

He then goes out to speak to a number of people. He starts -- he offers the financial statements to a New York corporation that sits on these -- that takes no action with respect to them. He takes them to two development corporations, both of whom refuse to

invest the full amount that will be necessary to purchase the corporation because they don't think the corporation is worth that much investment.

The corporate employee, on the other hand, finally, in discussions with another corporation, let us call it O.S.G., tells them that I know an available corporation and you can buy it for $2,000, which is $400,000 over the price that the other persons who have looked at the corporation, say it is worth; that the employee, or the proposed manager, said -- wants to set himself up with that corporation. He wants O.S.G. to purchase that corporation so that he can in effect have a lifetime job with that corporation.

He wants to insert himself in the negotiations so that he will be a participant to the extent that they will let him do so, despite the fact that the O.S.G. -- it was absolutely premature as far as they were concerned.

They did go ahead with the negotiations and they bought a company for $2,000,000 without any real assistance from the employee or without warning as to a great many of the pitfalls that were involved, involving ancient equipment, a balance sheet that might

not accurately rreflect the financial figures and (that in effect make the assumption that they paid $400,000 more than the market price for it.

What would you say, under those circumstances?

Can you give me some opinion as to the value of the employee's services?

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MR. LEDWITH: Objection, your Honor.

THE COURT: Well, I'll take but I'll take it subject to connection. I don't think all of your assumptions have been established. I realize that you have made suggestions with respect to a number of them and one or two of them you have, of course -- there is some conflict in testimony. But I'll take it subject to connection if this witness can answer it.

MR. LAMBERT: We have testimony, your Honor, I believe from Mr. Flammia that he was seeking --

THE COURT: The way you worded that 1st, for example, just take the very last one where the market value is only $1,600,000. The wording of that alone makes the question objectionable. If you produce --

MR. LAMBERTON: Let me --

THE COURT: If you produce evidence in your case that shows that the market value of this property was only worth $1,600,000, you may be able to connect that. But at the moment, it is not connected.

MR. LAMBERTON: Your Honor, I was relying upon Mr. Flammia's own testimony, that the two

independent experts he went to, gave him --

THE COURT: Market value, Mr. Lamberton, is what -- is not what an offer -- an offer and a bid. You know that. You have practiced down on Wall Street long enough to know an offer and a bid doesn't extablish market value. The Revenue Service says it is halfway between but that doesn't even mean it is that. He made an offer of a million six. They made a demand of something in excess of $2,000,000. The parties didn't meet. That doesn't establish value. I practiced down there for 20 years. I ought to know. I have some knowledge of what's going on.

MR. LEDWITH: I have other objections, too.

THE COURT: I beg your pardon?

MR. LEDWITH: I have other objections, too, if I may be heard.

MR. LAMBERTON: Let me withdraw the question at the present time, your Honor.

THE COURT: The form. I will take it subject to connection.

MR. LAMBERTON: I do not propose to --

THE COURT: Okay.

CROSS-EXAMINATION

BY MR. LAMBERT: (Cont'd.)

Q Based upon your economic experience, Dr. Warner, could you look at the balance sheet of this corporation for me and perhaps we could discuss it together. I believe it's P.X. 10. No, I'm sorry. It's P.X. 8.

A I'm sorry. I'll have to find it. I don't locate it immediately.

Q It's a letter dated May 30, 1973. It has two enclosures annexed to it.

A I have it.

Q Could you tell from that balance sheet, Dr. Warner, or would you give me your opinion as to the worth of the company shown by that balance sheet?

THE COURT: Does it have a Pand L statement attached?

MR. LAMBERTON: No. This is the balance -- profit and loss. I'm sorry. The balance sheet.

THE COURT: Has it got a P and L statement attached?

MR. LAMBERTON: Yes, it does, your Honor. I'm sorry.

THE COURT: All right.

Q Can we take it on the basis of asset values

or net worth? What would the company be worth based upon your experience and expertise?

A I would say that it's very difficult to come to the conclusion you ask on the basis of a balance sheet of this kind. What is lacking here is a good deal of information about the sales prospects of the company and about its internal structure, about the market itself, et cetera. If you are asking me what the property is worth, I can give you an estimate. But as a business, I am not sure I could.

Q Could you, for example, looking at this and remembering that 1973 was a very difficult time, without knowing depreciation schedules, give me any idea as to what the $360,000 inventory meant?

A I'm sorry. I don't quite follow your question. You say what the inventory meant? In what sense?

Q What the value of the inventory -- what the actual value of the inventory is, could you determine that unless you knew what accounting principles were being applied?

A No, sir.

Q And if the person who tried to explain this had no idea what accounting principles were being applied, that would cut down on the value of this sheet substantially?

A It would be a meaningless figure, yes, sir.

Q And if you don't realize, for example, what the net plant equipment and property figure is, unless you know what the depreciation schedules are --

A That is also correct.

Q In other words, it would be extremely difficult from this balance sheet to come up with any idea as to what the company was worth?

A It is a self-serving document, that's right.

Q And then if you turn to the next page and look at the figures here, sales of $2,044,000 and a loss for the year of $4,000, you really can't value this on price earnings basis, can you?

A No, sir.

Q And that, as a matter of fact, it would be extremely unusual to pay $2,000,000 for a company with $2,000,000 in gross sales, wouldn't it?

A If that was all that was known, I would say yes. Could I amplify that statement?

Q Please do.

A Yes. My net feeling is, after what you have stated and what I have seen, is that the desire of the -- of O.S.G. to purchase was not based on this sheet, that there were other factors in their decision.

Q So that it was not the financials of the company which were the significant factor. It was not the financial statement that was given to O.S.G. by Mr. -- was it Mr. Brancato, which determined the final analysis whether they would or would not purchase the company. That would be my conclusion.

Q But what documents did you review before you gave us your opinion?

A I reviewed the forecast that was made by Mr. -- by the plaintiff, Mr. Flammia. I reviewed the correspondence and I reviewed the facts as they were related to me by --

Q Couldn't we take up the forecast, which is Plaintiff's Exhibit 20? What did you rely upon in this to come up with your determination that Mr. Flammia was worth $190,000?

A Sir, I made no effort on my own to evaluate the worth of the company, since the transaction was completed with which I had nothing to do, it was a purchase by O.S.G. for which they paid a price and they must have thought therefore that they were receiving a value which corresponded to their needs. So I take it for granted, therefore, that the O.S.G. were convinced that the sale

price of $2,000,000 was worth $2,000,000 to them. I begin with that assumption. I didn't look behind that because the sale was made.

Q What --

A Then I asked myself, sir, what kind of information they got from Mr. Flammia which brought them to that state of mind. Obviously, conveyed to them his enthusiasm for the company, his belief that if they invested in the compnay, it would become a profitable venture for them. In addition to the fact that apart from giving them gross figures, he gave them breakdowns which I thought were extremely important. For example, there is a complete breakdown of manufacturing expenses. In addition to that, there is a complete breakdown of the selling expenses. In addition, there is a breakdown of administrative expenses. In addition to that, as I recall, there is a breakdown of the employment situation of the firm. These were details which they could not have easily gotten anywhere else and I regarded those of great value in their coming to a determination to buy.

Q Even though that those figures were available -- available in gross, the fact that you do not have the -- under your breakdown, for example, of administrative expenses, of FICA tax, unemployment tax, employee welfare

and vacation, but you would have that all under general administrative expense in a profit and loss statement? Do you feel a statement in there is more important than the overall breakdown?

A I think so. I think that that is what created the confidence in the buyer, in the buyer to buy, namely, that they really felt that they understood the company's operations on the basis of detailed figures. They may be wrong. I am not saying that they got correct information. But that is what they acted on.

Q But in most -- in most ratio analyses of sales, the -- what you do is use gross figures, isn't it? That is, cost of goods sold to sales, the general administrative expense to labor, things of that nature and you are not really concerned with how many machineries you have and how many engineers and how many floor sweepers?

A Well, that depends. Depends again on the nature of the venture. You are dealing here with a speculative venture. The O.S.G. Company is considering a company which would become an outlet for them. I assume it was extremely important to them to know in detail what they were dealing with. And to place much greater reliance on the person who would -- had built up the firm, et cetera, and could tell them details, which interested them

in the transaction in which they might not have been interested if they merely saw gross figures.

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CROSS-EXAMINATION

BY MR. LAMBERTON: (continuing)

Q Let us make an assumption here:

If they were interested primarily in purchasing the land and the building where O.S.G. was located, plus for example a trademark and good will, would that change your opinion as to the value?

A It might.

Q Then the unique and special knowledge disclosed by the detailed schedules would not play a very large part in the sale, would it?

A In the limited sale which you discussed?

Q Yes.

A No, I don't think that would make much difference.

Q I don't understand your answer.

A I am saying the answer is if all that they were interested in is buying a property and they were not concerned about the operating potential, then these details would not matter to them.

Q Now I believe that you have indicated that the first breakdown of your total fee was for the ninety thousand dollar figure on the basis of the general finder's fee.

A That is correct.

Q And that was a service that would have been rendered to Mite Corporation, who is the seller?

A It certainly was a service rendered to Mite Corporation as seller, it was clearly a value to the O.S.G. Corporation as well, both parties after all were brought together here -- I don't follow your question too well.

Q Is it not traditional that the seller pays the finder's fee?

A If that is what you meant, yes.

Q Would your testimony be that it is of value, that is that the finder's service is a value to O.S.G. if it were widely and generally known in tap and die industry that Sossner was for sale for two million dollars?

In other words, was there a special finder's fee -- was there a special value to Mr. Flammia's service if it were widely known in the tap and tool industry that Sossner was available for sale at the price of two million dollars?

MR. LEDWITH: I object to the form of the question, your Honor, this presupposes --

THE COURT: I take it it is a hypothetical question subject to connection.

Now he has not got that part connected at the moment, that is for sure.

MR. LEDWITH: Could we ask counsel if he intends to give some proof.

THE COURT: I'm going to disregard the answer if he doesn't connect it.

MR. LAMBERTON: Your Honor, we have testimony from the New York Twisted and Drill that it was offered to them, we have testimony that it was offered

THE COURT: That doesn't make it widely and generally known. The only testimony we have here from the plaintiff is that he told these fellows and they didn't know anything about this. It might have been known to everybody, including Mrs. Ford, but not known by Mr. Ford and it would have been known to Mr. Ford if she went and told him, that is if Mr. Ford made the purchase.

The key to the question is:

Did Sossner and its officers know, not whether Consolidated Twist and Die did.

MR. LAMBERTON: But I think we are looking at it from the opposite point of view, if a number of people had known that Mite was selling it for two million dollars --

THE COURT: That is the second half of the question, you were talking about the first --

MR. LAMBERTON: Yes, I am.

THE COURT: That is as to whether -- and that is Sub. B -- whether everybody knew the two million dollar price.

MR. LAMBERTON: All I'm saying is if that price were generally known in this small industry of twenty five or thirty companies, the chances --

THE COURT: So far the evidence has shown that maybe one or two had had this opportunity offered to them. If you can show that it was widely and generally known that Sossner was available for two million dollars, then of course I will take that into consideration. But at the moment you haven't got such proof.

Can you answer the question?

THE WITNESS: I can try, it is a difficult question.

A I would say that the key point at issue is whether O.S.G. knew that Sossner was for sale.

For example, had Mr. Flammia come to whoever it was and said, Sossner is for sale, and the answer was, yes, we know all about that, then obviously there would be no service performed. But as I understand it --

Q Make one assumption with me --

MR. LEDWITH: Perhaps we can permit him to finish his answer.

THE COURT: Let him finish the answer. I am interested in the answer. Go ahead.

A As I say, as I understand it, the information that O.S.G. got about the willingness of Mite to sell came from Mr. Flammia and from no other source, and that this was the origin of their inquiries and further activities in purchasing Sossner.

Q And would it change your opinion as to the value of the services if in the first letter written by Mite Corporation Mite told O.S.G. precisely what it was they wanted from them as a purchase price and that was the ultimate purchase price?

A I have to ask you a question in return, sir:

Is this after Mr. Flammia told Mite that he had given this information to O.S.G.?

Q The evidence does not disclose, or please make the assumption that when Mr. Flammia called Mite he only disclosed the name of a purchaser, he did not say to Mite that I have told the purchaser that your purchase price is two million dollars, he was silent as to that fact.

And make the further assumption that after he had informed Mite of the name of the purchaser, Mite wrote

to the prospective purchaser and said:

Our price is two million dollars, which is the total of our investment in that company.

Now, would that change your opinion as to the value of Mr. Flammia's services?

A Not really, sir, because I also would assume that Mr. Brancato knew that when Mr. Flammia had informed the buyer of the availability of the company and also knowing that he knew the price that he would have conveyed that information and he operated in that light.

Now I can prove that, sir, and I am making more than an assumption, but that is as I understand the situation.

Q I believe you had a value of thirty thousand dollars for saving the buyer of a premium.

What facts did you rely upon in determining one or the other as to whether O.S.G. was safe from a premium price over?

A As I understand these transactions, where a buyer of a company seeks to acquire a company it is generally estimated that a premium price will be paid, a premium will be paid over the purchase price, which varies from five to twenty per cent.

Q What is the basis for that?

A To induce the seller to sell, it is a sweetener of the transaction.

Q No, I'm asking for your experience in connection with this factor:

Is this theoretical or is it the rule?

A No, it is based on talks I have had with people who are engaged in these things over a long period of time, it is based on reading, and I have read this in a book that has to do with acquisitions and mergers.

Q What is the name of that book?

A I have the book in my briefcase, sir, and I don't recall its name offhand.

May I get it for you? My briefcase is in the back, it is in the rear.

(Mr. Flammia then indicated the briefcase.)

THE WITNESS: Just the book. Why don't you take out the book.

Help yourself, yes, there, there it is.

Give it to the lawyer. That is the book.

BY MR. LAMBERTON:

Q The book is Acquisition and Merger Negotiation Strategy?

A That is right, and the author is Mark Strage, and it contains a number of articles by experts in the field

on their experiences.

Now may I state in answer to your question that on page 224 of this book this point is made:

"The average premium over market price is typically paid by buyers in mergers by both companies' managements, and it is approximately twenty per cent, and if there is a disagreement, if the tender and exchange offer is opposed by management, the typical offer is at least twenty five per cent premium."

Q Isn't that in the case of a publicly held company where you would have a knowledge of the stock?

A Yes.

Q Is this not a publicly held company?

A No, sir.

Q So the circumstances are not quite the same as the situation which you are describing.

A That is correct.

Q Now, you indicated that Mr. Flammia had forfeited an opportunity to acquire an interest in Sossner and that had a value.

A Yes indeed, I did not put a value on that but I think it certainly has a value which should be taken into account.

Q If you had not put a value on it, sir, I will

not question you further with respect to that.

A I did not put a specific figure on that.

Q Now another element here was eliminating the certainty -- eliminating -- my notes say eliminating certainty.

A Uncertainty.

Q Uncertainty to the buyer by communicating the interest to the buyer.

A The interest of the seller.

Q My notes are very bad, please tell me what you mean by that one.

THE COURT: Now I think, if I can read my notes, he said eliminating uncertainty for the buyer because Flammia is willing to invest his own time and money.

MR. LAMBERTON: What is that, Flammia --

THE COURT: Flammia is willing to invest his own time and money.

THE WITNESS: Sir, may I go over my reply on that one with you and see if I can clarify that?

I begin --

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BY MR. LAMBERTON:

Q What value did you place on that?

A I placed a $50,000 value on that and I base that on the fact that the kind of knowledge that Mr. Flammia had of the detailed operations of Sossner and future prospects was a unique property that only Flammia had, that he had built up the company and was interested in the company and was willing to invest his own time and money, and that by giving the details that I specified earlier of its operations, its technology, its labor force, etc., he reduced the buyer's risk in making such a purchase since the buyer now knew a great deal which gave him comfort in the advisability of making that purchase.

Q This was a definite benefit reached by O.S.G.?

A Definitely so.

Q And O.S.G. also received a definite benefit in that he found the company for them?

A Yes, sir.

Q And what we are talking about now, these benefits, they are to O.S.G. from the services rendered?

A That is correct.

Q That is at this particular point?

A That is correct.

Q And there was a further benefit in that O.S.G.

saved time, money and expense because of the time of their Japanese executives, and that it was a further $20,000?

A As well as their Chicago executives.

I am aware that companies which seek acquisitions spend much time and effort in that venture. I do know people who are employed in doing this and they spend a great deal of time and management costs are quite high. I put what I thought was a modest figure on that.

Q And that again is a benefit received by O.S.G. in that it was not compelled to expend its own resources?

A Exactly so.

Q These are basically all benefits received by the purchaser in this case, aren't they?

A That is correct.

Q And we are measuring the value of the services of Mr. Flammia by the benefits received by the buyer, O.S.G.?

A That is correct.

MR. LAMBERTON: I have no further questions.

REDIRECT EXAMINATION

BY MR. LEDWITH:

Q Professor, will you just assume that Mite Corporation was a publicly-held corporation and that Mite Corporation owned 100 per cent of the shares of Sossner Corporation:

Would this assumption in any way affect your opinion relative to the premium testimony you gave before?

A They would strengthen it. I would say that I had known that fact and I took that into consideration.

Q I see. Okay.

Thank you very much.

MR. LEDWITH: I have no further questions, your Honor.

MR. LAMBERTON: Your Honor, I move to strike the testimony of Dr. Warner on the grounds that what we have here is testimony based upon contractual grounds that these are benefits which flowed through O.S.G. when in fact the proper measure of the value of these services is the customary and usual value in the marketplace of services of this or a similar kind, and that Dr. Warner unfortunately has no experience in or knowledge of the customary value of those services.

THE COURT: Well now, Mr. Lamberton, you know as well as I do the value of many elements and many facets of evidence and that this is one of or perhaps more facets of his services which he has testified to. The fact that he has categorized them in response to your last question as being of value tr O.S.G. doesn't

mean that they are not a service or that they aren't indicia of the value of his services, and of course I will take it as evidence and as indicia of the value of his services.

Now, whether it is the full amount which he has ascribed or whether it is a greater amount or a lesser amount than he has ascribed as comprising the value of this man's services is something I will have to ultimately determine, but it certainly is evidence as to a value of his services.

So your motion is denied.

MR. LAMBERTON: Thank you, your Honor.

MR. LEDWITH: At this time the Plaintiff rests, your Honor.

THE COURT: Plaintiff rests.

MR. LAMBERTON: Your Honor, we would like to move pursuant to Rule 41(b) to dismiss Plaintiff's first cause of action on the grounds that Plaintiff has failed to provide credible evidence to indicate that there was any agreement as to a joint venture under the standards set down by this Court by your decision of October 7, 1975.

Your Honor made reference and advised of the various standards set forth in the Yanofsky case. We

LEO J. BRANCATO, called as a witness, having been first duly sworn by the Clerk of the Court, took the stand and testified as follows:

DIRECT EXAMINATION

BY MR. LAMBERTON:

Q What is your present position?

A I am President of the Mite Corporation.

Q How many years have you been associated with Mite?

A Since 1970.

Q What were you doing before that time?

A I was President of Helicoil Corporation which merged with Mite Corporation in 1970.

Q What was your title at that time?

A In 1970?

Q Yes.

A Vice President.

Q When did Helicoil acquire Sossner?

A I think it was 1967.

Q Did Sossner go along with Helicoil in the Mite acquisition?

A Yes.

Q Was Sossner under your supervision as a Group Vice President?

A Yes.

Q When did you first meet Mr. Jerry Flammia?

A Probably in the early 60's. Sossner was a supplier of Helicoil when it was privately owned.

Q When Helicoil took over Sossner, what was Mr. Flammia's position, if you know?

A He was President of Sossner at that time.

Q I would like to go forward in theperiod of 1972 and '73 and will you tell me whether Sossner fit into the Mite operation as a manufacturing entity?

THE COURT: What was that word?

MR. LAMBERTON: Whether Sossner fit into --

THE COURT: Oh, fit into.

MR. LAMBERTON: Yes.

Q Will you answer the question?

A Well, in the sense that it was the only cutting tool business that we had and it was relatively small in relationship to the total sales volume of Mite Corporation.

Q Was it a profitable operation?

A Slightly profitable, yes.

Q Did there come a time in late 1972 when Mr. Flammia showed an interest in purchasing Sossner?

A Yes.

Q Was Mite willing to sell at that particular time?

A We would have been if he had the money to

acquire the company.

Q What were the terms on which Mite would have been sold?

A We didn't get to the point of having specific terms. Jerry wanted a figure that would represent a consideration that I would consider appropriate and at that time I told him that our investment was approximately $2 million in the company, and if we could recover that investment then I would consider a proposal on his part.

Q Did Mr. Flammia present you with a concrete proposal?

A Well, it wasn't -- he never presented a concrete proposal but he obtained the advice at my request, as I recollect, of accountants and a lawyer and then reported back to me that he had a difficulty in reaching the figure that I had asked for and consequently he had the dilemma in that he could not arrange the financing.

(continued next page)

Q So any proposed purchase by Mr. Flammia fell through or expired by itself?

A It couldn't be pursued. There was no specific proposal made. The problem was presented and consequently there wasn't anything to pursue.

Q Now, early in March 1973 did there come a time when Mr. Flammia resigned as President of Sossner?

A Yes, he did.

Q Did he send a copy of that letter of resignation to you?

A He sent a copy to me, yes.

Q What were the circumstances of the resignation?

A He simply indicated that he was dissatisfied with his continued employment in the company and that he had attempted to arrange or present a -- or had presented a proposal to acquire the company which was not accepted, and that consequently he was resigning.

Q Was that resignation accepted?

A Yes, it was.

Q Fairly promptly?

A Fairly promptly thereafter. I don't recollect the specific period. But there wasn't a long deliberation concerning his resignation.

Q After Mr. Flammia left Sossner did my office

authorize Mr. Flammia to act as a finder on its behalf in seeking a purchaser for Sossner?

A It did not.

Q Did it authorize him to negotiate with anyone for the sale of Sossner on behalf of Mite?

A No, sir.

Q Now, did you authorize Mr. Flammia to represent Mite in any capacity after he had left its employ?

A No, sir.

Q Now, what was your first contact with Mr. Flammia after his resignation in March of 1973?

A He called me on the now famous date of May 14th and said he was out in Chicago someplace attending a trade show and was holding discussions with some people, and there was a possibility that the people he was talking to might have an interest in acquiring Sossner.

Q What did you respond to him?

A I merely reminded him that the company really wasn't for sale. That it was not a deliberate plan for divestment, and that I really hadn't made up my mind. I think I used the term I would like to mull it over.

Q Did you hear shortly thereafter from Mr. Flammia again?

A He called me in two or three days, and asking

me about the matter further, and saying that he was in a position to reveal the name of the company or the people with whom he was having these discussions.

And at that time he gave me the name of O.S.G., Mr. Zoppelt as an individual, and Mr. Zoppelt's telephone number.

Q What did you say to him?

A I would think the matter over further.

Q Did you tell him that you would call him back, that you would get in touch with Mr. Flammia?

A No, sir.

Q Were you prepared to negotiate through him with O.S.G. if he had any authority from O.S.G.?

MR. LEDWITH: I would object to it.

THE COURT: Yes, I will sustain it at this point anyway. It is hypothetical at this point. I will sustain the objection this time.

MR. LAMBERTON: I am sorry?

THE COURT: I will sustain the objection at this time. It is hypothetical. At least at this point it is.

Q I show you a letter dated May 17th introduced in evidence as TX-5 from Mr. Flammia to you and ask you did you receive that letter, Mr. Brancato?

A Yes.

Q I direct your attention to the first paragraph where he indicates that he has revealed to you the potential purchaser.

A Yes.

Q Then I ask you or direct your attention to the last paragraph where he says:

"...that you are mulling over the possibility of entering into negotiations and that you will be getting in touch with me soon..."

Did you tell him that?

A No, sir.

Q Why are you so sure you did not?

MR. LEDWITH: I object to why he is so sure.

THE COURT: No, I will allow it.

A Well, on several counts. First he had given me O.S.G.'s identity, and he had also given me Mr. Zoppelt's identity and telephone number. There was no reason for me to discuss my thoughts and my interest in the matter through Mr. Flammia.

If I was to confirm the sincerity and depth of the interest I would do so by going directly to Mr. Zoppelt, who was the party, I understood, could speak for the company, for O.S.G.

And the second question is, I further would not have carried out the discussions on this matter through Mr. Flammia as an intermediary because I didn't view him as a disinterested party in the matter because he and I had previously discussed his desire and his interest in acquiring the company. And I wouldn't want to be in the position of trying to filter through what might have been his personal interests and what might be the interests of O.S.G. I had to hear this direct.

MR. LEDWITH: I object to all of Mr. Brancato's answer and move to have it stricken as being purely subjective workings of his mind.

THE COURT: Well, I will allow the first part and strike the second part.

Q After obtaining from Mr. Flammia the name of O.S.G. and Mr. Zoppelt's telephone number did you then get in touch with Mr. Zoppelt?

A We subsequently talked on the telephone. I am vague as to whether I called Mr. Zoppelt or whether Mr. Zoppelt called me. I don't recall. Maybe I called him and couldn't reach him and then he subsequently called me. But we talked on the telephone.

Q Do you remember approximately when that was?

A Oh, I think it wasn't a long time afterwards. Maybe two or three days at the most.

Q After you talked to Mr. Flammia for the second time on May 16, 1973 did you call him thereafter? Did you personally place a telephone call to him thereafter?

A At no time.

Q Mr. Flammia testified that he called you -- that you called him on May 24, 1974 to supply again the names of Mr. Zoppelt, Mr. Osawa, and O.S.G. Did you place such a call?

MR. LEDWITH: Objection, your Honor.

THE COURT: On what ground?

MR. LEDWITH: He just answered after May 16th he didn't call Mr. Flammia any more. Now he is gilding the lilly.

THE COURT: No, I will allow it.

MR. LAMBERTON: One was a general question and the other one is quite distinct.

THE COURT: He can refresh his recollection on this.

A I have no reason to call him.

THE COURT: That is not the answer.

THE WITNESS: I did not.

Q Now, how many times did you talk to Mr. Zoppelt before the end of May, if you recall?

A Three, four, five times.

Q Did there come a time when you sent a letter with financial statements?

A Yes.

Q I show you a letter dated May 30th which has been introduced as PX-8 and ask you if that is that letter.

A This is the letter, yes.

Q The second paragraph of that letter states:

"...if we were to sell Sossner..." this is Brancato speaking ..."our objective would require recovery of Mite's investment as reflected on the balance sheet at the time of sale. Looking at the February 28 balance sheet we would expect the purchaser to pay the sum of A, advances from parent $160,848 and B, stockholder equity ($1,906.230) or $2,067,078."

Was that the price at which Mite was willing to sell Sossner?

A Yes.

Q Was that the price at which it was offered to Mr. Flammia?

A Yes, two million dollars.

Q When was your next contact with Mr. Zoppelt and Mr. Osawa, the representatives of O.S.G.?

A Oh, sometime in early June Mr. Zoppelt and Mr. Osawa visited me in Danbury. It might have been the

second week of June or the first week of June.

Q How many meetings did you have with representatives -- personal meetings did you have with representatives of O.S.G.?

A I believe there were two.

Q I would like to show you a letter, PX-13, and direct your attention to a note to Mr. Terry Osawa dated June 13th on the second page and see if that refreshes your recollection as to when those two meetings were.

A Well, they might have visited then the 12th or 11th of June and again may 10 days thereafter or thereabouts, because he was going to be in New York on the 19th.

Q Can you tell me when general agreement on price was reached between Mite and O.S.G.?

A I am not sure I understand what you mean by general agreement.

Q Did there come a time when O.S.G. and Mite had a meeting of minds as to the price at which the Sossner division would be sold by Mite to O.S.G.?

MR. LEDWITH: I will object to that, your Honor.

THE COURT: On what basis?

MR. LEDWITH: I don't think Mr. Brancato was in the position to indicate when O.S.G. first became willing to sell --

THE COURT: No, he said when did there come about a meeting of the minds. I assume it was when they sent the letter of intent.

THE WITNESS: I was going to say that was the date.

THE C JRT: It is in evidence.

MR. LEDWITH: It is not probative as to when O.S.G. first became willing.

THE COURT: He said when there was a meeting of the minds. That was the question. And not when one side or the other was willing to do some·ing.

MR. LEDWITH: Just being asked that they might have been willing to sell on May 14th --

THE COURT: Why don't you ask him when was the letter of intent signed.

MR. LAMBERTON: June 27th.

THE COURT: Is that the date on which the parties agreed upon a given price?

THE WITNESS: Yes, your Honor.

Q At either the first or second meeting did you authorize O.S.G. to speak to one Warren Demery?

A Yes. As a matter of fact on the first meeting with O.S.G. my recollection is that Warren Demery was present.

Q Who was Mr. Demery?

A Mr. Demery is the gentleman sitting in the courtroom right here (indicating).

Q What was he?

A He was the president of Sossner at the time that the discussions were being held with O.S.G.

Q He is the one who replaced Mr. Flammia?

A Yes. He was successor to Mr. Flammia.

Q I am sorry. Go back to the first meeting with Mr. Demery -- between O.S.G. and Mite, Mr. Demery was present?

A Yes, he was present. And the matter of management was raised. And my recollection is that I said that Mr. Demery --

MR. LEDWITH: Excuse me, sir. Your Honor, I will object to any conversation.

THE COURT: Yes. Sustained.

Q Well, Mr. Demery was present at the first meeting?

A Yes.

Q Did you discuss at that meeting Mr. Demery's shifting to O.S.G.?

MR. LEDWITH: Objection, your Honor.

THE COURT: Sustained.

Q As a result of that meeting did Mr. Demery leave the Mite Corporation?

Copy Reid
Pledwith Sr.